

# **I Think I am Ethical?**

## **Understanding Ethics for the State Tax Professional**

**Glenn McCoy , Jr., Director  
KPMG LLP**

**FTA Annual Meeting 2019**

# Speaker Bio—Glenn C. McCoy, Jr.

**Glenn C. McCoy, Jr., Esq. is a Director in the New York City office of KPMG LLP. Previously, Glenn served as the Principle-In-Charge State & Local Tax Services of a New York City Super-Regional Public Accounting firm and also served as Principal & Practice Leader for the Multistate Income/Franchise Tax Practice of Ryan, Inc. Prior to that, he was appointed to serve as the National Partner-In-Charge of state and local tax services for BDO Seidman, LLP. With over 25 years of experience, Glenn began his career with the Oklahoma Tax Commission (OTC), serving as Assistant General Counsel, and as the Director of the Income Tax Division. He also served as the Director of State Taxes for Kerr McGee Corporation, a Fortune 200 oil company. Glenn specializes in state and local tax issues and has extensive experience in handling complex audits, protests and appeals. Mr. McCoy has represented clients in over 20 state jurisdictions resulting in significant tax savings for numerous clients. Glenn has also worked extensively in state tax planning and restructuring to assist clients in reducing state and local income, franchise, sales, use, excise, and severance taxes.**

**Glenn is also a noted speaker on state and local tax topics having presented at the following Symposia and Organizations: Tax Executives Institute (TEI), the American Petroleum Institute (API), the Federation of Tax Administrators (FTA), the Georgetown University Advanced State & Local Tax Institute, the Public Law Institute (PLI), the Council on State Taxation (COST), the J. Paul Hartman State & Local Tax Forum, the Institute for Professionals in Taxation (IPT) Annual Conference, ABA/IPT Advanced Tax Seminars, the NYU Annual Institute on State & Local Taxation, and the New York City and Florida Bar Associations.**

**Mr. McCoy was appointed an Adjunct Professor of Law at Georgetown University Law Center for the 2014-2015 academic year and was the recipient of the Distinguished Service Award for IPT in 2014. Mr. McCoy received his bachelor's degree in accounting from Oklahoma State University where he was awarded the Dean Raymond D. Thomas award as the outstanding graduate in the College of Business. He received his J.D. from the University Of Oklahoma College Of Law where he served as Editor of the Oklahoma Law Review.**

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# The Ethical Landscape

A man wrote a letter to the IRS saying, “I have been unable to sleep knowing that I have cheated on my income tax. I have understated my taxable income and enclose a check for \$1,500.....”



# The Ethical Landscape

“ . . . If I still can't sleep, I will send in the rest.”

# Personal Convictions

- Individual Moral Code
  - Often the first level of scrutiny of a potential action
- Individual Character
  - ✓ Internal moral barometers
  - ✓ Only the starting point; must navigate the whole framework
- Disincentive of Public Disclosure
  - ✓ “What-would-your-mother-say” test
  - ✓ “*Wall Street Journal*” Test
  - ✓ “The Red Face Test”
  - ✓ “What do you do when no one is watching?”

# Introduction

- Culture of Greed Still Exists
- Survey of 250 financial industry insiders:\*
- 23% had observed or had firsthand knowledge of wrongdoing at work
- 26% believed compensation structure created an incentive on compromising ethic standards
- 24% would engage in insider trading to make \$10 million
- (increased to 38% for those with under 10 years of experience)

\* Andrew Ross Sorkin, *On Wall St., A Culture of Greed Won't Let Go*, New York Times (July 16, 2013).

# Introduction

- No man has a good enough memory to be a successful liar.  
Abraham Lincoln
- Even the most rational approach to ethics is defenseless, if there isn't the will to do what is right. Alexander Solzhenitsyn
- Always do right. This will gratify some people and astonish the rest.  
Mark Twain
- There's one way to find out if a man is honest – ask him. If he says 'yes,' he is a crook. Groucho Marx
- There is no such thing as a minor lapse of integrity. Tom Peters
- The internal revenue code has made more liars out of the American public than golf. Will Rogers

# Ethics Standards - ABA

- Standards of the American Bar Association
- Model Rules of Professional Conduct. Scope, Section 14 provides:
  - ✓ The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline.
  - ✓ Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion.
  - ✓ Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should."
  - ✓ Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

# Ethics Standards - ABA

- Standards of the American Bar Association
- Model Rules of Professional Conduct. Scope, Sections 16 & 21 provide:
  - ✓ Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings.
  - ✓ The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.
  - ✓ The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule.
  - ✓ The Preamble and the note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

# Poll Question

Taxpayer's lawyer receives a cover letter from IRS lawyer enclosing a copy of a document filed with IRS Appeals but the envelope also enclosed a memo from the IRS lawyer to his clients, the IRS agent and her manager, with an analysis of the weak points of the IRS's case (marked "attorney client privilege"). What should the Taxpayer's lawyer do?

- A. Shred it.**
- B. Notify sender.**
- C. Use it to beef up the taxpayer's response to the document.**
- D. Celebrate his client's good fortune.**

# What should Taxpayer's lawyer do when he inadvertently receives documents from the opposition?

Shred it.

Notify sender.

Use it to beef up the Taxpayer's response to the document.

Celebrate his client's good fortune.

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# Poll Question

TP's lawyer filed a claim for refund of federal income tax for his client. The IRS requested a meeting to discuss the merits of the claim. The TP's lawyer knows that the claim is barred by the statute of limitations. At the meeting, it appears that the IRS does not know that the statute of limitations has run and appears ready to grant the refund. Must the TP's lawyer disclose to the IRS that the claim is barred?

- A. No.**
- B. No, but only if there is a colorable defense to the assertion of the S/L by the IRS.**
- C. Yes.**
- D. This is one lucky taxpayer!**

# Must the T/P's lawyer disclose to IRS that the refund claim is barred by the S/L?

No. **A**

No, but only if there is a colorable defense to the assertion of the S/L by the IRS.

**B**

Yes. **C**

This is one lucky taxpayer! **D**

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# Ethics Standards - AICPA

- AICPA Code of Professional Conduct Structure
- Introduction
  - Section 50 – Principles of Professional Conduct
  - Section 90 – Rules: Applicability and Definitions
  - Section 100 – Independence, Integrity, and Objectivity
  - Section 200 – General Standards Accounting Principles
  - Section 300 – Responsibilities to Clients
  - Section 400 – Responsibilities to Colleagues
  - Section 500 – Other Responsibilities and Practices
  - ET Appendixes
  - ET Topical Index
- <http://www.aicpa.org/about/code/index.htm>

# Ethics Standards - AICPA

- AICPA Code of Professional Conduct Framework
- Maintain the good reputation of the profession.
- Serve the public interest.
- Perform services with:
  - ✓ Integrity.
  - ✓ Due care.
  - ✓ Professional competence.
  - ✓ Independence & Objectivity.
  - ✓ Confidentiality.
  - ✓ Dissociate from others who behave unethically.

# Ethics Standards - AICPA

- AICPA Code of Professional Conduct Principles
- The Principles guide members in the performance of their professional responsibilities:
  - Article I – Responsibilities
  - Article II – The Public Interest
  - Article III – Integrity
  - Article IV – Objectivity and Independence
  - Article V – Due Care
  - Article VI – Scope and Nature of Services

# Ethics Standards - AICPA

- AICPA Code of Professional Conduct
  - Article III: Integrity
- ✓ Integrity is an element of character fundamental to professional recognition.
- ✓ Integrity is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions.
- ✓ Integrity requires a member to be, among other things, honest and candid within the constraints of client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage.
- ✓ Integrity also requires a member to observe the principles of objectivity and independence and of due care.

# Ethics Standards - AICPA

- AICPA Code of Professional Conduct:
  - Article III: What Is Meant by Integrity?
- Courage to stand by principles even in face of pressure
- Act out of moral principle, not expediency
- Never let loyalty cloud good judgment and ethical decision-making
- Attributes of an person with Integrity:
  - ✓ Truthfulness
  - ✓ Courage
  - ✓ Sincerity
  - ✓ Honesty

# Ethics Standards - AICPA

- Professional Standards for Ethics
- American Institute of Certified Public Accountants (AICPA)
  - Statement on Standards for Tax Services
  - (“SSTS” or “Standards”)
    - ✓ SSTS and interpretations issued thereunder reflect the AICPA’s standards of tax practice and delineate members’ responsibilities to taxpayers, the public, the government, and the profession.
    - ✓ Ongoing process to articulate standards.
    - ✓ Promulgated by the Tax Executive Committee.



# Ethics Standards - AICPA

- Statement on Standards for Tax Services (SSTS)
  - No. 1: Return Positions – Realistic Possibility Standard
  - No. 2: Answers to Questions on Returns
  - No. 3: Certain Procedural Aspects of Preparing Returns
  - No. 4: Use of Estimates
  - No. 5: Departure from a Position Previously Concluded in an Administrative Hearing or Court Decision
  - No. 6: Knowledge of Error, Return Preparation and Administrative Proceedings
  - No. 7: Form and Content of Advice to Taxpayers

# Poll Question

Greg is Director of SALT for DEF Corp. which is under an income tax audit by MASS. The auditor has indicated a possible assessment of \$30M in additional tax, excluding interest. Greg invites auditor to his country club for drinks & Dinner costing \$350 paid by DEF Corp. During dinner auditor discusses trouble with his son's Harvard applications. Greg, an alum, makes some calls to Harvard. A week later MASS issues a "no change" audit. Which statement below is most correct?

- A. There are no ethics violations in buying an auditor a dinner for \$350.**
- B. No ethics violation unless auditor's son is accepted and actually enrolls in Harvard.**
- C. The fact clearly establish bribery.**
- D. There is no basis for the proposed \$30M Mass income tax assessment, and Greg is entitled to use any means to secure a "no change" audit result.**

**During dinner, auditor explains his son is having trouble getting into Harvard. Greg, an alum, makes some calls to Harvard. A week later MASS issues a "no change" audit. Which stmt. is most correct?**

There are not ethic violations in buying an auditor dinner costing \$350.

Not ethics violation, unless auditor's son is accepted and enrolls in Harvard.

The facts clearly establish that a crime has been committed. (Bribery)

There is no basis for the proposed \$30M MASS assessment, and Greg is entitled to use any means to secure a "no change" audit.

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# Ethics Standards - Circular 230

- The rules in Circular 230 are codified as Title 31 of the Code of Federal Regulations, Subtitle A, Part 10 (31 C.F.R. Part 10).
- Circular 230 contains “standards of practice” to promote ethical practice before the IRS.
  - ✓ Imposes affirmative duties.
  - ✓ Prohibits certain types of conduct.
  - ✓ Establishes a legal process for disciplining tax professionals for violation.
  - ✓ Disciplinary action includes censure, suspension, disbarment, fines & injunctive relief.

# Select ABA Model Rules Applicable to Tax Professionals

- Rule Topic
- 1.1 Competence
- 1.2 Scope of Representation and Allocation of Authority between Client and Lawyer
- 1.3 Due Diligence
- 1.4 Communication
- 1.6 Confidentiality of Information
- 1.7 Conflict of Interest: Current Clients
- 1.8 Conflict of Interest: Current Clients Specific Rules
- 3.3 Candor toward the tribunal
- 4.1 Truthfulness in Statements to Others
- 7.2 Advertising
- 8.4 Misconduct

# Select ABA Model Rules Applicable to Tax Professionals

- Competence

Rule 1.1 A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

- Scope of Representation and Allocation of Authority between Client and Lawyer

Rule 1.2 ...a lawyer shall abide by a client's decisions concerning the objectives of representation and, as require by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to 'settle a matter.

- Diligence

Rule 1.3 A lawyer shall act with reasonable diligence and promptness in representing a client.

# Select ABA Model Rules Applicable to Tax Professionals

- Communication
- Rule 1.4 (a) A lawyer shall
  - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
  - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
  - (3) keep the client reasonably informed about the status of the matter;
  - (4) promptly comply with reasonable request for information; and
  - (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

# Select ABA Model Rules Applicable to Tax Professionals

- Confidentiality of Information

Rule 1.6 (a) A lawyer *shall not* reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b) or required by paragraph (c).

(b) A lawyer *may* reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (1) To prevent the client from committing a crime in circumstances other than those specified in paragraph (c);
- (2) To prevent the client from committing fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;



# Select ABA Model Rules Applicable to Tax Professionals

- Confidentiality of Information (continues)

Rule 1.6 (b) A lawyer *may* reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

- (3) To prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
- (4) To secure legal advice about the lawyer's compliance with these Rules;
- (5) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (6) To comply with other law or a court order; or
- (7) To detect and resolve conflicts of interest if the revealed information would not prejudice the client.

# Select ABA Model Rules Applicable to Tax Professionals

- Confidentiality of Information
  - Rule 1.6 (c) A lawyer *shall* reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial bodily harm.

# Select ABA Model Rules Applicable to Tax Professionals

- Conflicts of Interest: Current Clients
- Rule 1.7
- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client; or
  - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

# Select ABA Model Rules Applicable to Tax Professionals

- Conflicts of Interest: Current Clients (continued)
- Rule 1.7
- b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
  - 1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - 2) The representation is not prohibited by law;
  - 3) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal, and
  - 4) Each affected client gives informed consent, confirmed in writing.

# Select ABA Model Rules Applicable to Tax Professionals

- Conflicts of Interest: Specific Rules
- Rule 1.8
  - (a) A lawyer *shall not* enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
    - (1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
    - (2) The client is informed in writing that the client may seek the advice of independent legal counsel on the transaction, and is given a reasonable opportunity to do so; and

# Select ABA Model Rules Applicable to Tax Professionals

- Conflicts of Interest: Specific Rules
- Rule 1.8 (cont.)
  - (3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.
- (b) A lawyer *shall not* use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

# Select ABA Model Rules Applicable to Tax Professionals

- Candor Toward the Tribunal
- Rule 3.3 (a) A lawyer *shall not* knowingly:
  - (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
  - (2) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - (3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

# Select ABA Model Rules Applicable to Tax Professionals

- Rule 1.0 (m) “Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party’s interests in a particular matter.



# Select ABA Model Rules Applicable to Tax Professionals

- Truthfulness in Statements to Others
- Rule 4.1 In the course of representing a client a lawyer *shall not* knowingly:
  - (a) make a false statement of material fact or law to a third person; or
  - (b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.
- A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false.

# Select ABA Model Rules Applicable to Tax Professionals

- Truthfulness in Statements to Others
- Rule 4.1
- (b) (cont.) Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.
- This Rule refers to statements of fact as well as law. Whether a particular statement should be regarded as one of fact can depend on the circumstances.

# Select ABA Model Rules Applicable to Tax Professionals

- Advertising
- Rule 7.2 A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may
- Pay the reasonable costs of advertisements or communications permitted by this Rule;
- Pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;
- Pay for a law practice in accordance with Rule 1.17; and
- Refer clients to another lawyer or a non-lawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if
  - ✓ The reciprocal referral agreement is not exclusive, and
  - ✓ The client is informed of the existence and nature of the agreement.

# Select ABA Model Rules Applicable to Tax Professionals

- Misconduct
- Rule 8.4 It is professional misconduct for a lawyer to:
  - a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
  - b) Commit a criminal act that reflect adversely on the lawyer's honest, trustworthiness or fitness as a lawyer in other respects;
  - c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
  - d) Engage in conduct that is prejudicial to the administration of justice;
  - e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
  - f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

# Ethics Standards - ABA

- Standards of the American Bar Association
- ABA Formal Opinion 85-352
  - ✓ Lawyers may advise their clients in reporting a position and/or filing methodology on a return favorable to the client as long as they believe, in good faith, that the position is warranted within existing law or can be supported in a good faith argument against existing law.
  - ✓ “Good faith” is defined as believing there is at least a 33% possibility of success if the matter is litigated.
  - ✓ A lawyer has a duty not to mislead the IRS deliberately by misstatements or silence or permit a client to mislead the IRS.

# Poll Question

Your corporate client has asked you as its tax lawyer prepare a Tax Opinion to advise it as to whether it may take a particular reporting position on its corporate income tax return. Client plainly expects a favorable opinion. You dare not deliver bad news, or do you?

- A. You may give the client the advice it is hoping for, provided the position is not frivolous.**
- B. If it saves the client money in taxes, it is a great idea, regardless of its support in the law.**
- C. If it is more likely than not that the position will be sustained on the merits, the position may be taken.**
- D. If there is a realistic possibility of success if the matter is litigated, the position may be taken.**

# Client asks attny for a Tax Opinion & makes it clear it expects a favorable opinion. What is your ethical obligation?

You may give the client the advice it is hoping for, provided the position is not frivolous.

If it saves the client money in taxes, it is a great idea, regardless of its support in the law.

If it is more likely than not that the position will be sustained on the merits, the position may be taken

If there is a realistic possibility of success if the matter is litigated, the position may be taken.

# Poll Question

The Taxpayer's representative plans to e-mail to the client a memo, marked "Attorney-Client Privileged Communication," concluding that the Taxpayer has income tax nexus in specified jurisdictions due to the Wayfair decision. Must it be encrypted or sent in some manner other than by e-mail?

- A. Encryption is not required if the lawyer has taken reasonable efforts to prevent inadvertent or unauthorized access.**
- B. Attorneys are not permitted to communicate on any privileged matter by e-mail, but CPAs may do so.**
- C. Encryption is not required but the representative must secure a read receipt.**
- D. Unencrypted e-mails are an acceptable means of communicating such conclusions.**



# Must the e-mail from the attny be encrypted or sent in some manner other than by e-mail?

Encryption is not required if the lawyer has taken reasonable efforts to prevent inadvertent or unauthorized access.

Attorneys are not permitted to communicate on any privileged matter by e-mail, but CPAs may do so.

Encryption is not required, but the representative must secure a read receipt.

Unencrypted e-mails are an acceptable means of communicating such conclusions.

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# Poll Question

During a recent meeting with an Attorney, the Tax Manager of a retail company mentioned his company had a \$5 million income tax assessment from FL. The Consultant, attempting to gain the Tax Manager's business, says he is familiar with FL income tax assessments, and currently has a settlement offer at the FL Dept. that will save millions of dollars on behalf of his client XYZ Corp. Based upon this revelation, he asks Tax Manager to hire him for his FL use tax audit representation.

- A. Ethical, you can always promote your professional abilities to prospects.**
- B. Ethical as long as the FL Department and the Tax Manager don't mind.**
- C. Unethical—Attorneys shall not reveal information relating to the representation of a client except under certain circumstances not relevant in these facts.**
- D. Unethical unless XYZ has given its informed consent to the disclosure and disclosure was required by law.**
- E. Both "C" and "D"**

# Based upon sharing this client information, Attney asks Tax Mgr to hire him for his FL audit. Which stmts are most accurate?

Ethical, you can always promote your professional abilities to prospects.

Ethical as long as the FL Dept and the Tax Mgr don't mind.

Unethical. Attnys shall not reveal confidential info about a client unless client gives consent.

Unethical unless XYZ has given its informed consent to the disclosure and it was allowed by law.

Both "C" and "D"

# Poll Question

The taxpayer's representative negotiated a favorable income tax settlement for his/her client. The Department of Revenue drafted a settlement agreement, executed it, and sent it over to the taxpayer. The taxpayer's representative notices the agreement contains an error in the taxpayer's favor. Is the representative obligated in any way? Which statement is most correct?

- A. An attny shall not knowingly make a false stmt of material fact or law, or fail to disclose same.**
- B. An attny has a duty of candor to the tribunal.**
- C. A practitioner who knows her client has not complied with the law or has made an error or omission must advise her client of the fact promptly.**

# The T/P's rep notices the settlement agreement contains an error in the T/P's favor. Is the rep obligated in any way? Which stmt. is most correct?

An attny shall not knowingly make a false stmt of material fact or law, or fail to disclose same.

An attny has a duty of candor to the tribunal

A practitioner who knows her client has not complied with the law or has made an error or omission must advise her client of the fact promptly.

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# Poll Question

You are an attorney arguing a tax case before an ALJ in Texas. The morning of your argument, you receive notice of a decision from the Texas Supreme Court that is directly contrary to one of the positions you intend to argue later in the day.

**True or False?**

**You have an obligation to advise the ALJ of the contrary legal authority.**

# True or False? You have an obligation to advise the ALJ of the contrary legal authority. Why?

True

False

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# Statements on Standards for Tax Services (SSTS)

- These statements apply to all members providing tax services regardless of the jurisdictions in which they practice. Interpretations of these statements may be issued as guidance to assist in understanding and applying the statements.
- The SSTSs and their interpretations are intended to complement other standards of tax practice, such as Treasury Department Circular No. 230, *Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, Enrolled Retirement Plan Agents, and Appraisers before the Internal Revenue Service*; penalty provisions of the Internal Revenue Code; and state boards of accountancy rules.
- ...enforcement of these rules, as part of the AICPA's Code of Professional Conduct Rule 201, *General Standards*, and Rule 202, *Compliance With Standards* (AICPA, *Professional Standards*, vol. 2, ET sec. 201 par..01 and ET sec. 202 par..01), will be undertaken on a case-by-case basis. Members are expected to comply with them.



# Statements on Standards for Tax Services (SSTS)

- SSTS No. 1 Tax Return Positions
- SSTS No. 2 Answers to Questions on Returns
- SSTS No. 3 Certain Procedural Aspects of Preparing Returns
- SSTS No. 4 Use of Estimates
- SSTS No. 5 Departure From a Position Previously Concluded in an Administrative Proceeding or Court Decision
- SSTS No. 6 Knowledge of Error: Return Preparation and Administrative Proceedings
- SSTS No. 7 Form and Content of Advice to Taxpayers

# Statements on Standards for Tax Services

## **SSTS No. 1. Tax Return Positions**

4. A member should determine and comply with the standards, if any, that are imposed by the applicable taxing authority with respect to recommending a tax return position, or preparing or signing a tax return.

# Statements on Standards for Tax Services

## **SSTS No. 1. Tax Return Positions (cont.)**

5. If the applicable taxing authority has no written standards with respect to recommending a tax return position or preparing or signing a tax return, or if its standards are lower than the standards set forth in this paragraph, the following standards will apply:

- a. A member should not recommend a tax return position or prepare or sign a tax return taking a position unless the member has a good-faith belief that the position has at least a realistic possibility of being sustained administratively or judicially on its merits if challenged.
- b. Notwithstanding paragraph 5(a), a member may recommend a tax return position if the member (i) concludes that there is a reasonable basis for the position and (ii) advises the taxpayer to appropriately disclose that position.
- c. Notwithstanding paragraph 5(a), a member may prepare or sign a tax return that reflects a position if (i) the member concludes there is a reasonable basis for the position and (ii) the position is appropriately disclosed.

# Statements on Standards for Tax Services

## **SSTS No. 1. Tax Return Positions (cont.)**

6. When recommending a tax return position or when preparing or signing a tax return on which a position is taken, a member should, when relevant, advise the taxpayer regarding potential penalty consequences of such tax return position and the opportunity, if any, to avoid such penalties through disclosure.

7. A member should not recommend a tax return position or prepare or sign a tax return reflecting a position that the member knows a. exploits the audit selection process of a taxing authority, or b. serves as a mere arguing position advanced solely to obtain leverage in a negotiation with a taxing authority.

# Statements on Standards for Tax Services

## **SSTS No. 2. Answers to Questions on Returns**

- A member should make a reasonable effort to obtain from the taxpayer the information necessary to provide appropriate answers to all questions on a tax return before signing as preparer.

# Statements on Standards for Tax Services

## **SSTS No. 3. Certain Procedural Aspects of Preparing Returns**

2. In preparing or signing a return, a member may in good faith rely, without verification, on information furnished by the taxpayer or by third parties. However, a member should not ignore the implications of information furnished and should make reasonable inquiries if the information furnished appears to be incorrect, incomplete, or inconsistent either on its face or on the basis of other facts known to the member. Further, a member should refer to the taxpayer's returns for one or more prior years whenever feasible.

# Statements on Standards for Tax Services

## **SSTS No. 3. Certain Procedural Aspects of Preparing Returns (cont.)**

3. If the tax law or regulations impose a condition with respect to deductibility or other tax treatment of an item, such as taxpayer maintenance of books and records or substantiating documentation to support the reported deduction or tax treatment, a member should make appropriate inquiries to determine to the member's satisfaction whether such condition has been met.
4. When preparing a tax return, a member should consider information actually known to that member from the tax return of another taxpayer if the information is relevant to that tax return and its consideration is necessary to properly prepare that tax return. In using such information, a member should consider any limitations imposed by any law or rule relating to confidentiality.

# Statements on Standards for Tax Services

## **SSTS No. 4. Use of Estimates**

2. Unless prohibited by statute or by rule, a member may use the taxpayer's estimates in the preparation of a tax return if it is not practical to obtain exact data and if the member determines that the estimates are reasonable based on the facts and circumstances known to the member. The taxpayer's estimates should be presented in a manner that does not imply greater accuracy than exists.



# Statements on Standards for Tax Services

## **SSTS No. 5 Departure From a Position Previously Concluded in an Administrative Proceeding or Court Decision**

4. The tax return position with respect to an item as determined in an administrative proceeding or court decision does not restrict a member from recommending a different tax position in a later year's return, unless the taxpayer is bound to a specified treatment in the later year, such as by a formal closing agreement. Therefore, the member may recommend a tax return position or prepare or sign a tax return that departs from the treatment of an item as concluded in an administrative proceeding or court decision with respect to a prior return of the taxpayer provided the requirements of Statement on Standards for Tax Services (SSTS) No. 1, Tax Return Positions, are satisfied.

# Statements on Standards for Tax Services

## **SSTS No. 6, Knowledge of Error: Return Preparation and Administrative Proceedings**

4. A member should inform the taxpayer promptly upon becoming aware of an error in a previously filed return, an error in a return that is the subject of an administrative proceeding, or a taxpayer's failure to file a required return. A member also should advise the taxpayer of the potential consequences of the error and recommend the corrective measures to be taken. Such advice and recommendation may be given orally. The member is not allowed to inform the taxing authority without the taxpayer's permission, except when required by law.

5. If a member is requested to prepare the current year's return and the taxpayer has not taken appropriate action to correct an error in a prior year's return, the member should consider whether to withdraw from preparing the return and whether to continue a professional or employment relationship with the taxpayer. If the member does prepare such current year's return, the member should take reasonable steps to ensure that the error is not repeated.

# Statements on Standards for Tax Services

## **SSTS No. 6, Knowledge of Error: Return Preparation and Administrative Proceedings (cont.)**

6. If a member is representing a taxpayer in an administrative proceeding with respect to a return that contains an error of which the member is aware, the member should request the taxpayer's agreement to disclose the error to the taxing authority. Lacking such agreement, the member should consider whether to withdraw from representing the taxpayer in the administrative proceeding and whether to continue a professional or employment relationship with the taxpayer.

# Statements on Standards for Tax Services

## **SSTS No. 7, Form and Content of Advice to Taxpayers**

- This statement offers guidance to members for communicating tax advice to taxpayers on federal, state, local, and international tax matters. Tax advice is a broad topic and includes the application of tax law (statutes, regulations, case law, and other issued guidance of a specific jurisdiction) to the specific facts and circumstances of a transaction, ongoing operations and activities, or planning situations of a taxpayer. Both compliance and planning engagements are included.
- When providing advice on federal tax matters, members should also look to Circular 230, §10.37 Requirements for written advice. This section provides members with a detailed explanation of the applicable rules and considerations for written advice in federal tax matters and the process a member should use in providing both written and oral advice. In addition, members should look to Paragraph 7 of SSTs No. 7 when deciding on the form of written advice to taxpayers.

# Statements on Standards for Tax Services

## **SSTS No. 7, Form and Content of Advice to Taxpayers**

1. This statement sets forth the applicable standards for members concerning certain aspects of providing advice to a taxpayer and considers the circumstances in which a member has a responsibility to communicate with a taxpayer when subsequent developments affect advice previously provided. The statement does not, however, cover a member's responsibilities when the expectation is that the advice rendered is likely to be relied on by parties other than the taxpayer.

2. A member should use professional judgment to ensure that tax advice provided to a taxpayer reflects competence and appropriately serves the taxpayer's needs. When communicating tax advice to a taxpayer in writing, a member should comply with relevant taxing authorities' standards, if any, applicable to written tax advice. A member should use professional judgment about any need to document oral advice. A member is not required to follow a standard format when communicating or documenting oral advice.

# Statements on Standards for Tax Services

## **SSTS No. 7, Form and Content of Advice to Taxpayers (cont.)**

3. A member should assume that tax advice provided to a taxpayer will affect the manner in which the matters or transactions considered would be reported or disclosed on the taxpayer's tax returns. Therefore, for tax advice given to a taxpayer, a member should consider, when relevant (a) return reporting and disclosure standards applicable to the related tax return position and (b) the potential penalty consequences of the return position. In ascertaining applicable return reporting and disclosure standards, a member should follow the standards in Statement on SSTS No. 1, Tax Return Positions.

4. A member has no obligation to communicate with a taxpayer when subsequent developments affect advice previously provided with respect to significant matters, except while assisting a taxpayer in implementing procedures or plans associated with the advice provided or when a member undertakes this obligation by specific agreement

# Statement on Standards for Tax Services (SSTS) contain advisory guidelines for which of the following?

All members of the AICAP

Enrolled Agents

Licensed Attorneys

Enrolled Actuaries

All of the above

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# Poll Question

CPA has been engaged to file current year tax returns for T/P. CPA finds error in prior year tax return. When questioned, the client (T/P) admitted to purposely reporting incorrect data to obtain a better refund. What are your ethical obligations?

- A. Prepare the current year tax return and forget about the prior year error.**
- B. Consider withdrawing from preparing current tax return and whether or not to “fire” the client (T/P).**
- C. Prepare current year return, but take reasonable steps to ensure that the error is not repeated.**
- D. Refuse to prepare the current year tax return unless the client agrees to correct the error.**
- E. Both “B” and “C”**
- F. Both “B” and “D”**



# When questioned, the T/P admitted to purposely reporting incorrect tax return data to obtain a better refund. What are your ethical obligations?

Prepare the current year tax return and forget about the prior year error.

Consider withdrawing from preparing current tax return and whether or not to "fire" the T/P (client).

Prepare current year return, but take reasonable steps to ensure that the error is not repeated.

Refuse to prepare the current year tax return unless the T/P agrees to correct the error.

Both "B" and "C"

Both "B" and "D"

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# A CPA may recommend an "aggressive" tax return position if what two conditions are met?

He concludes there is a reasonable basis for the position and advises taxpayer to disclose.

He concludes it is more likely than not the position will be upheld on audit and advises taxpayer to disclose.

He is sure he is right because a case he has is pending at the Depart of Revenue on the same issue and it looks "promising".

# Poll Question

You are a CPA. A new client has come to you and said that after six years of operating “under the radar” in State A that it needs to “get right” and start filing income tax returns. You are preparing and will sign the initial tax return for the current period in State A. The initial return asks: “What was the first date the company began doing business in the state?” Can you leave the answer blank, as you know it would be disadvantageous to your client if you respond that they began doing business in the state six year ago?

**A. Yes**

**B. No**

# Can a CPA leave a tax return question blank, if the answer would harm the client? Why?

Yes.

No.

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# Poll Question

Your company operates in State A that has peculiar sale tax charging requirements that its software cannot handle without extensive modification. Without the modification company will under-collect and under-remit \$100K annually in sales tax. As Tax Director, and a CPA, you have a quote of \$500K to modify the software. Your company policy requires a 3-year pay back on IT system changes, believing it is cheaper to pay the tax, interest, and penalties if caught on audit. What should Tax Director do?

- A. Follow company policy and do not implement the software modification.**
- B. Try to get an exception to company policy and implement the modification.**
- C. Implement the modification regardless of company policy.**

# If company policy and tax return compliance are in conflict, what is the BEST answer below?

Follow company policy and do not implement the software modification.

Implement software modification so company is compliant in filing sales tax reports accurately.

Ask for an exception to company policy and implement software modification subject to granting of policy exception.

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# Who is subject to Circular 230 jurisdiction?

- State licensed Attorneys and Certified Public Accountants authorized and in good standing with their state licensing authority who interact with tax administrative at any level and in any capacity.
- Persons enrolled to practice before the IRS – Enrolled Agents, Enrolled Retirement Plan Agents, and Enrolled Actuaries.
- Persons providing appraisals used in connection with tax matters (e.g., charitable contributions; estate and gift assets; fair market value for sales gain, etc.).
- Unlicensed individuals who represent taxpayers before the examination, customer service and the Taxpayer Advocate Service in connection with returns they prepared and signed.

# Who is subject to Circular 230 jurisdiction?

- Licensed and unlicensed individuals who give written advice with respect to any entity, transaction, plan or arrangement; or other plan or arrangement, which is of a type the IRS determines as having a potential for tax avoidance or evasion. For this purposes “written advice” contemplates all forms of written material, including the content of an email, given in connection with any law or regulation administered by the IRS.
- Any person submitting a power of attorney in connection with limited representation or special authorization to represent before the IRS with respect to a specific matter before the Agency.



# What does “Practice before the IRS” entail?

- “Practice before the IRS” comprehends all matters connected with a presentation to the IRS, or any of its officers 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 documents; filing documents; corresponding and communicating with the IRS; rendering oral and 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.

# Non Standardization of Rules

- While the various rules of ethical tax conduct are all, in general, designed to prohibit “bad conduct” and, in general, address similar issues that tend to overlap, they are not uniform by any means. As a result, the action taken to resolve a conflict may differ depending on the governing authority. Consequently, the tax practitioner should determine which ethical rules are applicable and in what particular capacity the tax practitioner is acting.
- Example: A, an attorney, determines that an ethical conflict may require his withdrawal from a client matter. A’s conduct will be dictated by his particular state bar association rules of conduct and Circular 230. Contrast this with B, a tax return preparer, who is asked by a client to take a potentially unreasonable tax position. B’s conduct will be governed by Circular 230 and IRC§ 6694.

# Circular 230 Select Provisions

- § 10.21 Knowledge of client's omission. A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of such noncompliance, error, or omission. The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

# Circular 230 Select Provisions (continued)

- § 10.22 Diligence as to accuracy.
  - (a) In general. A practitioner must exercise due diligence –
    - (1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;
    - (2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and
    - (3) In 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.

# Circular 230 Select Provisions (continued)

- § 10.22 Diligence as to accuracy.
- - b) Reliance on others. Except as modified by §§10.34 and 10.37, a practitioner will be presumed to have exercised due diligence for purposes of this section 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

# Circular 230 Select Provisions (continued)

- § 10.23 Prompt disposition of pending matters. A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.
- § 10.29 Conflicting interests.
  - (a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if —
    - (1) The representation of one client will be directly adverse to another client; or
    - (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.

# Circular 230 Select Provisions (continued)

- **§ 10.29 Conflicting interests.**

- (b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner **may** represent a client if –
  - (1) The practitioner **reasonably believes** that the practitioner will be able to provide **competent and diligent representation to each affected client**;
  - (2) The representation is **not prohibited by law**; and
  - (3) **Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, 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.**
- (c) 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.

# Circular 230 Select Provisions (continued)

- § 10.32 Practice of law. Nothing in the regulations in this part may be construed as authorizing persons not members of the bar to practice law.
- § 10.34 Standards with respect to tax returns and documents, affidavits and other papers.
  - (a) Tax returns
    - (1) A practitioner may not **willfully, recklessly, or through gross incompetence** –
    - (i) **Sign** a tax return or claim for refund that the practitioner **knows or reasonably should know** contains a position that –
      - (A) **Lacks a reasonable basis;**
      - (B) **Is an unreasonable position** as described in section 6694(a)(2) of the Internal Revenue Code (Code) (including the related regulations and other published guidance);
      - (C) Is a **willful** attempt by the practitioner to understate the liability for tax or a **reckless or intentional disregard of rules** or regulations by the practitioner as described in section 6694(b)(2) of the Code (including the related regulations and other published guidance).



# Circular 230 Select Provisions (continued)

- **§ 10.34 Standards with respect to tax returns and documents, affidavits and other papers.**
- (b) Documents, affidavits and other papers –**
  - (1) A practitioner may **not advise** a client to take a position on a document, affidavit or other paper submitted to the Internal Revenue Service unless the position is not frivolous.
  - (2) A practitioner **may not** advise a client to submit a document, affidavit or other paper to the Internal Revenue Service –
    - (i) The purpose of which is to delay or impede the administration of the Federal tax laws;
    - (ii) That is frivolous; or
    - (iii) That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule or regulation.

# Circular 230 Select Provisions (continued)

- **§ 10.34 Standards with respect to tax returns and documents, affidavits and other papers.**
- **(c) Advising clients on potential penalties –**
  - (1) A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to –
    - (i) A position taken on a tax return if –
      - (A) The practitioner advised the client with respect to the position; or
      - (B) The practitioner prepared or signed the tax return; and
    - (ii) Any document, affidavit or other paper submitted to the Internal Revenue Service.
  - (2) The practitioner also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure.
  - (3) This paragraph (c) applies even if the practitioner is not subject to a penalty under the Internal Revenue Code with respect to the position or with respect to the document, affidavit or other paper submitted.

# Circular 230 Select Provisions (continued)

- § 10.34 Standards with respect to tax returns and documents, affidavits and other papers.
- Relying on information furnished by clients. 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.

# Circular 230 Select Provisions (continued)

- § 10.35 Competence.
- 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.

# Circular 230 includes rules on all of the following topics EXCEPT:

Who is authorized to practice before the IRS

Standards for "covered opinions"

Compliance with state ethical requirements

A set of best practices to guide practitioners

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# Poll Question

As Tax Director, you have recently been approached by some of the business folks regarding a stock sale they want to complete within the quarter. They want to sell stock of a subsidiary, but you realize after reading the representations and warranties related to the subsidiary's state and local tax liabilities that some major liabilities have either been omitted or are incorrect.

Do any of the issues below raise ethical concerns for you as Tax Director?

- A. You are aware of material facts that have not been included in the tax opinion?**
- B. You are aware of adverse legal authority that has not been included in the tax opinion?**
- C. The client wants a higher comfort level than you feel is justified?**

# Which issues below about the sale of the subsidiary's stock raise ethical problems for Tax Dir?

Tax Dir is aware of material facts that have been omitted from the Tax Opinion.

Tax Dir is aware of adverse legal authority that has not been included in the Tax Opinion.

Tax Dir has been instructed to issue a "Should" level Tax Opinion, when he thinks a "More Likely Than Not" level is correct.

All of the above.

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# **Sources of Guidance**



# IPT Code of Ethics

- PREAMBLE
- The Institute for Professionals in Taxation has established this Code of Ethics to govern the conduct of members in connection with the performance of their professional duties as state and local tax professionals and as members of IPT.

# IPT Code of Ethics – Preamble

- As professionals, the members of IPT have an obligation for the competence and integrity of their work and conduct.
- Each member of IPT is bound by this Code of Ethics and agrees to report to the Committee on Professional Ethics any violation of the Code known to such member.
- An IPT member having supervisory responsibility for other state or local tax professionals should make those subordinates aware of this Code of Ethics and instruct them to adhere to its provisions.

# IPT Code of Ethics – Preamble

- The Committee on Professional Ethics, and in the event of an appeal, the Board of Governors, interprets the provisions of this Code in rendering opinions and in conducting investigations and hearings pursuant to regulations and procedures established by the Board.

# IPT Code of Ethics

1. IT IS UNETHICAL to engage in any conduct that discredits IPT, its membership, or the tax profession.
2. IT IS UNETHICAL to engage in any activity that results in a conviction of any crime committed in connection with the member's involvement in a tax matter.
3. IT IS UNETHICAL to operate beyond the boundaries of an agreed relationship with an employer or client.
4. IT IS UNETHICAL for a member of IPT to state or imply that such member represents a person that the member does not represent, or to file any document on behalf of such person without authorization.

# IPT Code of Ethics

5. IT IS UNETHICAL to disclose confidential employer or client documents or information except with the consent of the employer or client or as required by law.
6. IT IS UNETHICAL to offer or give anything of value to a public official to induce that official to take any action with respect to a state or local tax matter.
7. IT IS UNETHICAL to offer or give anything of material value to an individual in an employment, advisory or representative relationship with a business to induce that individual to recommend the purchase of goods or services by the business, and IT IS UNETHICAL for such individuals to receive such value.

# IPT Code of Ethics

8. IT IS UNETHICAL to pay, retain, or accept a share of a fee or other monetary compensation for the referral of a person to another for the provision of tax services in which the recipient of such compensation does not participate, unless advance notice is given to the person for whom such services are to be performed. The amount of the compensation for the referral need not be disclosed unless requested by the person for whom the services are to be performed.
9. IT IS UNETHICAL to solicit a tax assignment by assuring a specific result or to solicit, assign, accept or perform a tax assignment that is conditioned upon producing a preconceived opinion or conclusion.
10. IT IS UNETHICAL to initiate or pursue an appeal, protest, refund claim or other action on behalf of a taxpayer for which there is known to be no basis in fact or law. When the basis is unknown, the determination of whether a basis in fact or law exists must be made as soon as reasonably possible.

# IPT Code of Ethics

11. IT IS UNETHICAL for a member, in the performance of a tax assignment, to fail to exercise independent professional judgment in advising and representing a client.
12. IT IS UNETHICAL in the performance of a tax assignment to knowingly furnish or knowingly rely upon inaccurate, deceitful or misleading information, or to knowingly withhold information which lawfully should be revealed.
13. IT IS UNETHICAL to prepare or use in any manner, for any purpose, a resume or statement of professional qualifications that is misleading or false.

# IPT Code of Ethics

- 14. IT IS UNETHICAL in promoting a tax practice or soliciting tax assignments to make misleading or false representations.
- 15. IT IS UNETHICAL to use client listings or references without specific authorization.
- 16. IT IS UNETHICAL to state or imply IPT authorization, endorsement or approval of any business, product or service.
- 17. IT IS UNETHICAL in any representation of fact to IPT, in a membership application, renewal form, or otherwise, to knowingly furnish inaccurate, deceitful, or misleading information, or to knowingly withhold material information.



# IPT Code of Ethics

18. IT IS UNETHICAL for a member having supervisory responsibility for another state or local tax professional to knowingly authorize, direct, permit or ratify any subordinate's act or omission that is declared unethical by this Code, regardless whether the subordinate is a member of IPT.
19. IT IS UNETHICAL to represent a client if such representation would be, or would risk being, adverse to the interests of another client unless each affected client gives informed written consent to such representation.
20. IT IS UNETHICAL to have, acquire, or seek a personal interest in a matter that is adverse to the interests of a client or employer.

# Professional Organizations

- American Bar Association

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html)

- American Institute of CPAs

<http://www.aicpa.org/Research/Standards/Tax/Pages/default.aspx>

- Tax Executives Institute

<http://www.tei.org/membership/Pages/StandardsofConduct.aspx>

# Professional Organizations

- Institute for Professionals in Taxation  
<http://www.ipt.org/learncenter.asp?id=178410&page=29>
- Professional Oaths
  - e.g., California Attorney's Oath  
([http://www.calbarxap.com/applications/CalBar/PDFs/code\\_section\\_6068.pdf](http://www.calbarxap.com/applications/CalBar/PDFs/code_section_6068.pdf))

# Government-Imposed Rules of Professional Organizations

- Sarbanes-Oxley

<http://www.sec.gov/about/laws.shtml#sox2002>

- Circular 230

[http://www.irs.gov/pub/irs-utl/circular\\_230.pdf](http://www.irs.gov/pub/irs-utl/circular_230.pdf)

- State-specific rules of professional conduct
- Rules within tax laws
- Taxpayer Bills of Rights
- State Level Codes of Conduct

# Corporate Policies

- Company's own ethics policies or codes
- Association of Corporate Counsel

<http://www.acc.com/advocacy/keyissues/legalethics.cfm>

**Questions? Thank you!**

**FTA Annual Meeting 2019**



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