NAVIGATING CLIENT NEEDS *and the* LAW

- TAX ETHICS -

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WHY IS THIS COURSE IMPORTANT?

- CPAs who are tax professionals are subject to a variety of rules from different sources.
- Failure to comply could result in adverse consequences, both personally and professionally.

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COURSE OBJECTIVES

- Appropriately use Treasury Department Circular No. 230, Regulations Governing Practice before the Internal Revenue Service.
- Connect Circular No. 230 guidance with that provided by the American Institute of CPAs (AICPA), including that provided in the AICPA's Code of Professional Conduct and Statements on Standards for Tax Services.
- Understand that the Code of Virginia §54.1-4413.3 Standards of Conduct and Practice regulates persons who use the CPA title in Virginia, including those who are tax professionals.

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TREASURY DEPARTMENT CIRCULAR NO. 230 (REV. 6-2014)

- CPAs are eligible to practice before the IRS without any additional qualifications.
- "Practice" includes tax planning and advice, preparation of returns, including claims for refunds, and all matters connected with presentation before the IRS.

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CODE OF PROFESSIONAL CONDUCT

- Principles
- Responsibilities
- Public interest
- Integrity
- Objectivity and independence
- Due care
- Scope and nature of services

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STATEMENTS ON STANDARDS FOR TAX SERVICES

- Last revised in 2010
- There is a revision project to reflect current tax practice by CPAs.

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CODE OF VIRGINIA

- Title 54.1, Subtitle VI, Chapter 44 governs regulation of CPAs
- Standards of Conduct and Practice §54.1-4413.3

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REVIEW QUESTION 1

A non-CPA registered tax preparer is subject to the following:

A. AICPA Code of Professional Conduct

B. Circular 230

C. Standards on Statements of Tax Services

D. Code of Virginia §54.1-4413.3

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DUE DILIGENCE

- Competence
- Reliance on client-provided data
- Notify clients of noncompliance, errors or omissions
- Required due diligence to claim certain credits, head of household

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DUE DILIGENCE

STATEMENT ON STANDARDS OF TAX SERVICES (SSTS)

No. 1 *Tax Return Positions*

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 Proceeding or Court Decision*

No. 6 *Knowledge of Error: Return Preparation and Administrative Proceeding*

No. 7 *Form and Content of Advice to Taxpayers*

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DUE DILIGENCE – SSTS NO. 3 CERTAIN PROCEDURAL ASPECTS OF PREPARING RETURNS

- SSTS No. 3 explains that the CPA may in good faith rely, without verification, on information provided by the client or third parties.
  - *However, the CPA should make reasonable inquiries if the information appears incorrect, incomplete or inconsistent with the CPA's knowledge or judgement.*

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DUE DILIGENCE: IRS PUBLICATION 4687

If these tax benefits are claimed:

- Earned income tax credit (EITC)
- Child tax credit (CTC)
- Additional childcare credit (ACTC)
- American opportunity tax credit (AOTC)
- Head of household filing status (HOH)

Then preparer must meet these due diligence requirements:

- Compute the credits based on the fact
- Complete and submit Form 8867
- Keep records
- Ask questions

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DUE DILIGENCE

Best Practices

- Engagement policy & checklist
- Engagement letters for tax planning and tax compliance services
- Client organizers
- Ask questions annually and update documentation

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DUE DILIGENCE - CASE STUDY

- Licensee A represented a client as a business advisor and tax preparer and was negligent in reporting net operating losses twice in two years.
- In addition, Licensee A deducted hundreds of thousands of dollars in expenses on investment properties as they were incurred (instead of capitalized) which, under audit, were disallowed.
- Sanctions included a reprimand, monetary penalties, CPE and an essay on best practices for client-related correspondence and documentation.

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REVIEW QUESTION 2

Which of the Statements on Standards for Tax Statements (SSTS) discuss that CPAs may in good faith rely, without verification, on information provided by the taxpayer or third parties?

A. SSTS #1

B. SSTS #2

C. SSTS #7

D. SSTS #3

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CONFLICTS OF INTEREST

A conflict exists if:

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

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CONFLICTS OF INTEREST

Examples:

- Representing two clients at the same time regarding the same matter who are in a legal dispute with each other
- Providing tax services for several members of a family whom the CPA knows to have opposing interests
- Referring a tax client to an insurance broker or other service provider who refers clients to the CPA under an exclusive arrangement

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CONFLICTS OF INTEREST

May continue with representation if:

- Conflict is disclosed
- Each party waives the conflict
- Written consent is obtained

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CONFLICTS OF INTEREST

Best Practices:

- Identify the conflict
- Resolve the conflict
- "Rule of 3"

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CONFLICTS OF INTEREST - CASE STUDY

- Licensee B had a long-term relationship with a married couple. Licensee B was aware that they were separated and getting divorced. Their engagement and therefore their client was the couple, not the individuals themselves.
- At the request of the husband, Licensee B filed a “married filing separately” return for the husband without prior consultation with the wife. Since these clients normally filed extensions, the wife was unaware of the filing until after the original due dates and incurred substantial debt to the IRS and Virginia Department of Taxation.
- No conflict of interest document was provided or signed by the husband or wife. A monetary penalty was assessed for the violations of conflict of interest, failure to communicate with the clients and due professional care.

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REVIEW QUESTION 3

Circular 230 requires the following when the tax professional identifies a conflict of interest:

A. Disengage the clients

B. Requires a written waiver from each party within 45 days of the event

C. Requires only a disclosure from the tax professional to the affected parties

D. If the practitioner believes they can reasonably provide competent and diligent representation to each, the practitioner should disclose the conflict to the parties and obtain a written consent from each party to waive the conflict no later than 30 days after the event.

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QUALITY CONTROL AND MANAGEMENT

Issues to consider:

- Confidentiality of client information
- Solicitations
- Fees
- Best practices

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QUALITY CONTROL AND MANAGEMENT

- Procedures for complying with Circular 230 for all members, associates and employees
- Procedures to ensure services are competently delivered and adequately supervised
- No specific QC standard under SSTS

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REVIEW QUESTION 4

Which is true concerning Quality Control (QC)?

A. Statements on Standards for Tax Statements (SSTS) requires a written plan for tax practices

B. Circular 230 requires a written plan for tax practices

C. Circular 230 requires those responsible for overseeing a firm's tax practice take reasonable steps to ensure the firm's procedures for all members, associates and employees are consistent with best practices under 10.33 (a)

D. Quality control is not required

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RECORD RETENTION

Retain records that document or support the firm's:

- Client/engagement evaluation process
- Administrative records
- Engagement delivery
- Engagement disclosure

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RECORD RETENTION

How long? Consider:

- Type of service
- Statute of limitation and the discovery rule
- Regulatory or contractual requirements
- Different retention periods for different clients and/or services
- Apply retention policy consistently on both paper or electronic records

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RECORD RETENTION

- Client records when there is a fee dispute
- Circular 230: Return records necessary for client to comply with federal tax obligation
- AICPA: Return client-prepared records promptly
- AICPA: May withhold CPA-prepared records

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RECORD RETENTION

Best Practices

- Establish a firm record retention and destruction policy
- Remind clients they are responsible for maintaining records too
- Written permission to release any information to a 3rd party
- Caveat to the record retention and destruction policy

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RECORD RETENTION - CASE STUDY 1

- Licensee C violated IRS Circular 230, subsection 10.28, by failing to provide his client with copies of the client's files
- A practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with federal tax obligations.

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RECORD RETENTION - CASE STUDY 2

- Licensee D had a practice continuation agreement with a non-CPA. During a tax season, Licensee D encountered some medical issues and turned all client files over to the new tax preparer without prior notification or consent of the client.
- Client contacted Licensee D numerous times to check on the status of his returns and when no response was received, he requested the returns of his records.
- Since Licensee D had turned records over to the non-CPA, the records could not be returned. Therefore, Licensee D violated the Code of Virginia when they failed to comply with AICPA Code of Professional Conduct §1.400.001.01 AICPA by failing to return all the client's records when requested by the client.

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REVIEW QUESTION 5

The AICPA code includes the following concerning records:

A. The member should return client-provided records in the member's custody to the client at the client's request.

B. Member prepared working papers are required to be sent to the client.

C. Member's work products cannot be withheld if fees are due.

D. Members must retain client records and work products permanently.

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DATA SECURITY

- No specific requirements in Circular 230, AICPA code or SSTS
- Gramm-Leach-Bliley Act's Safeguard rule: Practitioners are required to create and enact an information (data) security plan to protect client data
- IRS Publication 5293, *Data Security Resource Guide for Tax Professionals*
- IRS Publication 4557, *Safeguarding Taxpayer Data*
- PTIN application *W-12* check the box must have a data security plan

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DATA SECURITY

- Line 11. Check the box to confirm awareness of your responsibility to protect taxpayer information.
- Additional Resources:
  - Pub. 4557, Safeguarding Taxpayer Data
  - Pub. 5417, Basic Security Plan
  - IRS.gov/IdentityTheft
  - IRS.gov, keyword: Protect Your Clients Protect Yourself

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REVIEW QUESTION 6

What document states that paid tax return preparers must have a data security plan?

A. Statements on Standards for Tax Statements (SSTS) #3
B. Circular 230
C. PTIN application
D. Code of Virginia §54.1-4413.3

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REMEMBER

- All tax professionals must adhere to the regulations in Circular 230.
- Persons who use the CPA title in Virginia are ethically bound to adhere to the principles of professional conduct contained in the AICPA Code and the standards of practice provided in the SSTS.

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