# Ethics

## General Ethical Considerations for Tax Controversy Attorneys and Proposed Amendments to Circular 230—Implications for Tax Practitioners

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Maintaining strict ethical standards is essential for all tax practitioners. The Office of Professional Responsibility oversees the professional conduct of attorneys, Certified Public Accountants (CPAs), and enrolled agents who practice before the Internal Revenue Service (IRS). In recognition of increasingly complex professional obligations, the Department of Treasury has recently proposed amendments to Circular 230 that refine ethical requirements and underscore the importance of integrity, competence, diligence, and confidentiality. Below are a few examples.

Under the American Bar Association's Model Rule 1.6, attorneys are required to protect client information from unauthorized disclosure, except when clients give informed consent or when the law compels disclosure. Although Code Sec. 7525 extends a similar privilege to non-attorney tax practitioners, it does not apply in criminal matters or in cases involving tax shelters. Circular 230 §10.20 mandates that practitioners provide requested information to the IRS unless a valid claim of privilege exists, and any claim of privilege must be made in good faith and based on reasonable grounds. Tax practitioners are further expected to maintain "fitness to practice" by demonstrating good character, a strong professional reputation, and the requisite qualifications for competent representation before the IRS.

Tax practitioners must also avoid conflicts of interest as outlined in ABA Rule 1.7 and Circular 230 §10.29, which define conflict as a material limitation on representation due to competing obligations to another client or the practitioner's own interests. Before representation proceeds in such instances, the practitioner must obtain informed consent from each affected client, and if the conflict remains irreconcilable, the practitioner is obliged to withdraw. It is important to address these issues upfront because other rules will bring potential conflicts to the surface. For instance, in Tax Court proceedings, Tax Court Rule 24 sets forth that if counsel represents more than one person with differing interests with respect to any issue in a case, then that counsel must either secure the client's informed written consent, withdraw from the case, or take other appropriate steps. For instance, the court may inquire regarding how counsel addressed a conflict issue when an innocent spouse issue is before the court. This interaction will put a spotlight on whether counsel appropriately addressed conflicts during the engagement process, and before the Petition was filed with the court.

Under Circular 230 §10.22, practitioners must use due diligence to ensure that representations made to clients and to the IRS are accurate and well-supported, requiring reasonable inquiry into any information that appears inconsistent or incomplete. Due diligence includes the practitioner identifying whether a statement withstands the "smell test" and makes sense considering other disclosures and return filings by the client. For instance, a practitioner should think twice when evaluating an employee retention credit claim if the company claiming the credit did not reflect wages for employees on their income tax filings.

The standards found in Circular 230 §10.34 require practitioners to advise clients about potential penalties associated with tax and to ensure that any positions taken are supported by appropriate factual and legal foundations. If a position contains significant uncertainty, disclosure through Form 8275 or Form 8275-R may mitigate potential penalties. Non-compliance with these ethical and procedural rules can result in severe sanctions, particularly where practitioners rely on other professionals' work or on artificial intelligence (AI)-generated tax analysis without exercising reasonable care.

In recently proposed amendments to Circular 230, the Department of the Treasury addresses multiple areas that heighten ethical responsibility. These changes include stricter parameters governing contingent fees in tax representation, clarification of a practitioner's duty to address and correct errors in filings, broader requirements for factual analysis and evaluating assumptions, and explicit obligations to advise clients on penalty mitigation strategies. Particularly, with respect to the proposed Circular 230 changes relating to providing advice relating to past or general non-compliance (Section 10.21), tax practitioners have expressed concern over the proposed changes as the proposed changes may require the practitioner to render advice that would be detrimental to the best interests of their clients.

There is also a new emphasis on the proposed Circular 230 changes relating to maintaining proficiency with evolving technologies and AI-driven tax tools. Additional proposals seek to deter misleading or overly aggressive tax positions, raise qualification standards for tax-related appraisals, and enable more rapid disciplinary action when practitioners engage in egregious ethical breaches. Therefore, the proposed amendments to Circular 230 impose more rigorous ethical requirements, increasing the responsibilities placed on practitioners with respect to diligence and accountability.

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As highlighted by the proposed Circular 230 changes, tax professionals must regularly update their knowledge of evolving ethical guidelines to uphold their professional duties. These and other standards will enable practitioners to meet heightened expectations and continue fulfilling their ethical obligations in an evolving environment.

**ENDNOTE**

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