Ethics 2022 – Welcome!

Materials:

Chapter One – Objectives (p 1)
Power point packet
Handouts (40 pages)  (HO = Handout page)
Worksheets (“Blue Sheets”) (HO pp 39 – 40) Suggest printing
OR Other options: Slido.com code

Paper – fax to 651-209-8697
Ethics 2022 – Agenda (HO pp 1-2)

I. Overview – “Friends or Foes”

II. Tax Preparers

III. Tax Opinions

IV. Clients

V. Professional Liability

VI. Fiduciary
Overview – “Friends or Foes”

Ethics
2021

Nomad workers…..
Me – Practice Law??
How can I help…
Interpretations of the law…
Missed it….Who…Error??

Ethics
Footprint
Overview – “Friends or Foes”

Your Business

or the Tax Practice Business

Staff?

Number of clients??

Memberships??

Insurance??

Associates??

Instructors??

Family??
Ethics

Why? Friends...
- Accountable
- Encouraged
- Feel connected
- Common goal
- Growth
- Attitudes

Why (cont.)? Foes...
- Don’t ask
- Deadlines
- Money
- Self only
- Easy
- Same way
Discussion A
(HO p 39)
Ethics

Tax Preparers

Clients

Tax Opinions

Professional Liability

Fiduciary
Tax Preparers

A. Far reaches of the tax preparer

B. What trouble can I get into

A. Far reaches of the tax preparer

Title 25 Code of Federal Regulation

§ 301.7701-15 – Tax return preparer

(HO pp 3 - 9)
B. What trouble can I get into?

1. IRS Field Attorney Advice 20223301F (8/19/22)

Issue: Whether the Service should assess a penalty under Section 6694(b) for advising its client to take the return position...

Conclusion: The Service should assess a penalty under Section 6694(b) against *** for *** advising its client to take the return position that a reserve for estimated liabilities may be excluded from income.
Facts

Law and Analysis: “...was contrary to well-settled law applicable to the facts and circumstances.....thus should be subject to a penalty under Section 6694(b)

2. Court cases Preparers aiding in preparing false returns

Tax Preparers

2. Court cases Preparers aiding in preparing false returns (cont.)


MN Dept of Revenue – News Release (6/30/22)

Roseville tax preparation business charged with multiple tax crimes
Tax Preparers

FRIENDS

FOES
B. What trouble can I get into?

The issue of advising clients on exposure to future audits.....audit lottery

“‘But I’ve Always Done It That Way!’ Practitioner Considerations on Subsequent Year Exams” by Caleb Smith (HO pp 10 – 13)
Tax Opinions (p 2)

Purpose of Tax Opinions (p 2)

Intended purpose

Intended use

Inform on penalties

In writing

Opinion as Penalty Defense (pp 2 - 3)

• Reasonable cause exception
  I.R.Cs. § 6662, § 6663, § 6664

• Technical or complicated Issues
  (p 3)
  I.R.M. § 20.1.1.3.3.4.3(3)
  (HO pp 14 -15)
Reasonable and Good-Faith Reliance (p 4)  

3 Requirements

Level of Authority (p 4)

Reasonable basis (p 5)

Sufficient authority // Insufficient authority (Practitioner Note)

Conflict of interest (p 6)
Tax Opinions

Format of the opinion (p 6)

Circular 230 § 10.33

Sample outline of a tax opinion letter (Figure 1.1)

Circular 230 § 10/37 requirements for written advice - 6 listed (p 7)

AICPA SSTS No.7 – factors to consider (11) (pp 7 – 8)
Tax Opinions

Privilege for Tax Opinions (p 8)

  I.R.C. § 7525 Privilege (pp 8 – 9)
  Attorney – Client Privilege (p 9)
  Invoking the Privilege (pp 9 - 10)

“Kovel agreement basics for you and your client” by Karen Nakamura, CPA (Journal of Accountancy, July 1, 2022) (HO 16 - 20)
Clients

Contacts

Toxic clients

Email disclaimers

Contacts - Interviewing

“Gather Client experience data through effective interviews”
(HO pp 21 – 22)

1. Ask…be quiet
2. Examples
3. Repeat
4. Conversation
5. What’s next
Clients

Contacts - Conversation

Potential client - “just one question”

- Your knowledge
- General info
- Need more info

Prospective

- Conflict – decline
- Second opinion
- Ethical issues - decline

(“7 tips to handle those ‘just one question’ potential clients” by Nadine C. Atkinson-Flowers, Mind Your Business, May 25, 2022)
Contacts – Unresponsive clients??

“Unresponsive clients pose a professional liability risk” by Deborah K. Rood, CPA (Journal of Accountancy, Feb 1, 2022) (HO pp 23 – 26)

Info received piecemeal/late

Messy books & records

AWOL client

“Take a hike…”

Client too busy….
Clients

Discussion B-1 (HO p 39)
Clients

How to prune those toxic clients?

“5 tips to help you prune toxic clients” by Kristy Gusick (MN CPA Footnote, August/September 2022) (HO pp 27 – 28)

Signs
Prevents pruning

Strategies
Identify
Prepare
Annually

Referrals
Debrief
Clients

Discussion B-2 (HO p 39)  Email Disclaimers (p 11)

- Circular 230 Disclaimer

- Disclaimer of Duty to Update Advice (p 12)
Email Disclaimers (cont.)

- Confidentiality & Nondisclosure footers (p 13)
- Privilege Footers (p 14)
- Other Email Disclaimers (p 15)
  - Preliminary Advice
  - Reasonable Reliance on Facts
- Prohibiting Use by Others (p 16)
Clients

FRIENDS

FOES
Ethics

Tax Preparers

Professional Liability
Claim is filed
Consequences

Tax Opinions

Clients

Fiduciary
Professional Liability

Claim is filed (cont.)

“Understanding the professional liability claims process” by Sarah Beckett Ference, CPA, Journal of Accountancy, May 1, 2021) (HO pp 31 - 34)

- Reporting
- Building the defense team
- Development of a resolution plan
- What should CPAs expect?
- What can CPAs do to help?
Professional Liability

Consequences: What actions bring big fallouts:

- Failure to search
- Creeping scope
- Favor to a friend
- Off-the-cuff advice

FYI: Discussing fee increases with clients

**DO**
- Initiate the conversation
- Know and defend the reasons
- Review your past history
- Segment the increases
- How can they save money

**DON’T**
- Assume client will not notice
- Blame the firm
- Immediately offer to discount
- Assume – across the board increase

(The Do’s and Don’t’s of Discussing Fee Increases with Clients by Bryce Sanders, May 2, 2022)
Professional Liability

FYI: Client continuous – “seasick”

Risks – when firms “reaccepts” the client on an annual basis

Continuous evaluations – when

Common risk indicators

Ownership

Client character

Firm matters

Responding to changes

Client termination (elements to include)

Nature of service, effective date, WIP, fees due, status original records, record retention policy; request records, follow-up due dates...

Professional Liability

Discussion C (HO p 40)
Fiduciary

Acting as a Fiduciary (p 17)

Duty of competency
Reasonable compensation
Conflict of interest

Duty of Competency (p 17)

General
Fiduciary Duties
Delegating (p 18)
Fiduciary Accounting

UTC § 807 & § 810
(HO pp 35 - 36)
Fiduciary

Tax Return Preparation (p 20)  Compensation (p 20)

Practitioner Note – tax liability

Reasonable

Established (p 21)

Form 4810 (HO p 37)

Sample Trustee

Form 5495 (HO p 38)

Compensation Clause (p 22)
Fiduciary

Conflicts of interest (p 22)

When to represent

Identify possible conflicts (p 23)

Disclosure & consent (p 23) – waiver (p 24)

Due Diligence

Resignation (p 24) Trust language Resignation (p 25)
Discussion D (HO p 40)
Ethics

Why important?

Flying solo increased likelihood of a crash

Oversight failures show a firm’s blind spots

Pressure to win leads to a loss
TO DO:
Develop & communicate policies and procedures
Trust but verify (everyone is subject to oversight)
Have a consultative and collaborative culture
Reach out to your trusted advisors
Positive reinforcement

(“Rogue behavior: Risks your CPA firm should avoid” by Deborah K. Rood, CPA, Journal of Accountancy, June 1, 2022)
Ethics

2021

Ethics

2022

Ethics

Footprint
Ethics

Discussion Questions: FAX 651-209-8697

A: What are the qualities of people or organizations that are part of your Ethics Community?

B-1: What do you do with unresponsive clients? What are your tricks to get them to respond?

B-2: How do you “prune” those toxic clients? How do you decide?

C: What safeguards do you have in place to prevent a “claim?”

D: If you are a fiduciary or a future area, what hints, questions, safeguards, etc. would you have in place?

FAX: 651-207-8697
The End