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Ethics 2022

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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”

IV. Clients

II. Tax Preparers

V. Professional Liability

III. Tax Opinions

VI. Fiduciary

Overview – “Friends or Foes”

Ethics

2021

Ethics

Footprint

Nomad workers.....

Me – Practice Law??

How can I help...

Interpretations of the
law...

Missed it....Who...Error??

Overview – “Friends or Foes”

Your Business

or the Tax Practice Business

Staff?

Number of clients??

Memberships??

Insurance??

Associates??

Instructors??

Family??

Ethics 2022

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FRIENDS

FOES

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)

Tax Preparers

Tax Opinions

Clients

Professional Liability

Fiduciary

Tax Preparers

A. Far reaches of the tax preparer

A. Far reaches of the tax preparer

B. What trouble can I get into

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.

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

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

U.S.A., Plaintiff – Appellee v. Nikia Tull, Defendant – Appellant (Fourth Circuit, 21-4196, July 6, 2022)
unpublished opinion affirming an unreported DC Va. opinion

Tax Preparers

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

U.S.A., Plaintiff v. William Doonan and William Doonan and Associates Inc., doing business as William Doonan, Esq., Defendants (U.S. District Court, S.D. New York; 19 Civ.9578(JPC), March 30, 2022

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

Roseville tax preparation business charged with multiple tax crimes

Tax Preparers

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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)

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)

Client too busy....

Info received piecemeal/late

Messy books & records

AWOL client

“Take a hike...”

Discussion B-1 (HO p 39)

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

Referrals

Prepare

Debrief

Annually

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

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FRIENDS

FOES

Tax Preparers

Tax Opinions

Clients

Professional Liability

Claim is filed

Consequences

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

(“Small actions, big fallouts: Lessons from large claims” by Sarah Beckett Ference, CPA, Journal of Accountancy, May 2022)

Professional Liability

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...

“Client continuance: A life vest for risky clients”
by Deborah K. Rood, CPA, Journal of Accountancy, December 2021)

Professional Liability

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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)

Reasonable

Practitioner Note – tax liability

Established (p 21)

Form 4810 (HO p 37)

Form 5495 (HO p 38)

Sample Trustee
Compensation Clause (p 22)

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)

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

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Footprint

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?

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The End