

ETHICS

MISEA - Ethics

Ethics - 2016

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Course Objectives

- o Tax Practice & Procedures
- o The Gramm-Leach-Bliley Act (What's New?)
- o Cybersecurity:
- o Safeguarding Taxpayer Data
- o Circular 230
- o Practice Questions

1 Tax Practice & Procedures

IRS Updates List of Private Delivery Services.

- On May 6, 2015, the IRS issued Notice 2015-38 and updated the list of designated private delivery services (“designated PDSs”) that taxpayers may use to file returns and other tax documents where the timely mailed/timely filed rules will apply. This is the first update of designated PDSs since Notice 2004-38

2 Tax Practice & Procedures

Effective May 6, 2015, the list of designated PDSs is as follows:

FedEx:

- 1) FedEx First Overnight;
- 2) FedEx Priority Overnight;
- 3) FedEx Standard Overnight;
- 4) FedEx 2 Day;
- 5) FedEx International Next Flight Out;
- 6) FedEx International Priority;
- 7) FedEx International First;
- 8) FedEx International Economy.

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UPS:

- 1) UPS Next Day Air Early A.M.;
- 2) UPS Next Day Air;
- 3) UPS Next Day Air Saver;
- 4) UPS 2nd Day Air;
- 5) UPS 2nd Day Air A.M.;
- 6) UPS Worldwide Express Plus;
- 7) UPS Worldwide Express.

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Taxpayers are cautioned that merely because a delivery service is provided by FedEx or UPS, it does not mean that it is a “designated delivery service” for meeting the timely filing/paying rule under § 7502.

Only the specific delivery services enumerated in the above list are designated delivery services.

For Example: FEDEX GROUND IS NOT PERMITTED

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In Notice 2016-30, the IRS again updated its list of private delivery services, adding eight new DHL Express services to the list in Notice 2015-38. The Notice is effective on April 11, 2016. The additional

DHL services are:

1. DHL Express 9:00;
2. DHL Express 10:30;
3. DHL Express 12:00;
4. DHL Express Worldwide;
5. DHL Express Envelope;
6. DHL Import Express 10:30;
7. DHL Import Express 12:00;
8. DHL Import Express Worldwide.

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AGAIN:

Note that the Tax Court and other Federal courts have uniformly and consistently held that the timely mailed/timely filed rule does not apply to documents sent through a PDS if the PDS is not designated by the IRS

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What about “Stamps.com”? In *Sanchez v. Comm’r*, T.C. Memo 2014-223, the Tax Court dismissed for lack of jurisdiction a taxpayer’s petition challenging a deficiency, finding that a timely “postmark” from the postage software he used must be disregarded in favor of the U.S. Postal Service postmark that indicated the petition was mailed the day after the due date.

SEE PAGE 12-8

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Snow Day at the Tax Court Gives Taxpayer a Reprieve.

- In *Guralnik v. Comm’r*, 146 T.C. No. 15 (2016)(Reviewed Decision; Unanimous), the Tax Court held that a taxpayer’s petition was timely, even though delivered one day after the due date because of the Tax Court’s closure due to a snow storm.

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CDP Request Was Timely and Tolloed Limitations Period on Collection.

- In *Weiss v. Comm’r*, 146 T.C. No. 6 (2016), the Tax Court held that where a levy notice was mailed after the date on the notice, the mailing date controls whether a taxpayer’s request for a CDP hearing was timely such that the limitations period on collection was tolled. A similar result was reached in *Bongam v. Comm’r*, 146 T.C. No. (2016).

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An IRS Revenue Officer (RO) attempted to collect about \$550,000 of delinquent taxes for 1986 to 1991 from Charles Weiss by hand-delivering two notices of levy to Weiss’ home on February 11, 2009. The notices bore the date of February 11, 2009.

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The limitations period on collection as to Weiss was set to expire in July 2009. The RO was “deterred by a dog blocking the driveway” and did not deliver the notices that day. On February 13, 2009, the RO decided to mail the notices to Weiss’ last known address. The RO, however, did not issue new notices of levy dated February 13, 2009. He simply mailed the original notices dated February 11, 2009 to Weiss.

SEE PAGE 12-18 FOR DISCUSSION

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Does Preparer or Other Third-Party Fraud Cause an Open Limitations Period on a Return?

- Generally, the IRS has three years after a return is filed to assess additional tax, but § 6501(c)(1) provides that “in the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed ... at any time. In short, there is no limitations period for such a return. In *Allen v. Comm’r*, 128 T.C. 37 (2007),

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- the Tax Court concluded that there is no limitations period on assessment when the tax on a return is understated due to the fraudulent intent of the tax return preparer rather than the taxpayer herself. The Court noted that the statute does not specifically require that the intent to evade tax be that of the taxpayer rather than someone else such as a preparer.

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- In *BASR Partnership v. U.S.*, 795 F.3d 1338 (Fed. Cir. 2015), the Federal Circuit (in a 2-1 panel decision) affirmed the Court of Federal Claims in holding the language, structure, and history of the statutory provision indicates that a taxpayer must intend to evade tax for the IRS to rely on the indefinite extension of the normal three-year limitations period on assessment. The Court of Federal Claims had found that the meaning of “intent to evade tax” in the statute is limited to instances in which the taxpayer has the requisite intent to commit fraud.

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See also *Fennegan v. Comm'r*, T.C. Memo. 2016-118, where a couple hired one Duane Howell to prepare their returns for 1994-2001.

- From 1992 to 2003, Howell prepared about 750 to 800 returns for numerous clients, and ultimately was convicted of preparing false returns by (among other things) creating false deductions through non-existent or defunct partnerships. Such tactics were used on the taxpayers' returns. The issue in the case was whether Howell's fraud resulted in there being no limitations period on assessment.

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Judge Wells found that it did. In one sentence he stated that in *Allen* "we held that § 6501(c)(1) applies **even if it is the preparer of the return, and not the taxpayer, who falsely or fraudulently prepared the return with the intent to evade tax.**"

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Reasonable Cause as a Penalty Defense.

- In *Ibarra v. Comm’r*, T.C. Summ. Op. 2015-70, the Court held that a husband who had to care for his chronically ill wife, who later died, had reasonable cause for failure to timely file a return and pay taxes, and therefore was not liable for an addition to tax under § 6651. The Court, however, held the taxpayer liable for additions to tax for failure to pay estimated tax under § 6654.

- Compare *West v. Comm’r*, T.C. Memo. 2016-134, where the taxpayer was an engineer who had wages of \$148,000 in 2012, but failed to timely file his return and timely pay the taxes due. The taxpayer sought to avoid late filing and payment penalties on the grounds that the “complexity of the tax law coupled with his advanced age” caused him to be unable to comply with his obligations. Absent “no other explanation” the Court found that the taxpayer did not establish that he had reasonable cause for his tardiness. The case does not indicate how old the taxpayer was.

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- In *Vaughn v. U.S.*, 116 A.F.T.R.2d (RIA) 7022 (6th Cir. 2015), the Court held that the failure of a former major league baseball player's accountant and financial manager to file his tax returns and pay taxes timely, as well as their embezzlement of funds from his bank accounts, did not satisfy the reasonable cause defense to late filing and payment penalties.

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In *Navaid v. Comm'r*, T.C. Memo. 2016-37, the Court upheld an accuracy-related penalty against a taxpayer for substantially understating income, finding that he failed to report a distribution of his individual retirement account (IRA) after the funds in the account were seized through a court order and applied to restitution he owed following a criminal conviction.

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Incompetent Attorney Not Reasonable Cause for Late Return Filing.

- In *Specht v. U.S.*, 2015-1 U.S.T.C. (CCH) ¶150,134 (S.D. Ohio 2015), *aff'd*, 2016 U.S. App. LEXIS 17433 (6th Cir. 2016), the Court denied a refund of late-filing penalties paid by an estate, finding that malpractice by the estate's attorney, who was later declared incompetent, did not provide reasonable cause for the late filing of the estate tax return. The executor was aware of the filing deadline and had been informed that the attorney was not performing her duties.

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Short Takes on Recent Cases

- IRS May Levy on Social Security Disability Payments. In *Eversole v. IRS*, 116 A.F.T.R.2d (RIA) 6979 (D. Ida. 2015), the Court dismissed a taxpayer's claim challenging an IRS levy on his Social Security disability payments, rejecting the argument that such payments are exempt from levy.

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Short Takes on Recent Cases

Common Law Marriage in Oklahoma.

- In *Morris v. Comm’r*, T.C. Summ. Op. 2016-6, the Court held that an individual was not married under the common law of Oklahoma, and therefore disallowed dependency exemption deductions for his female friend’s child and grandchild, and child and earned income tax credits, and held that his filing status was single.

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The proposed schedule of user fees is:

- Regular installment agreements, \$225;
- Regular direct debit installment agreements, \$107;
- Online payment agreements, \$149;
- Direct debit online payment agreements, \$31;
- Restructured or reinstated installment agreements, \$89;
- Low-income rate, \$43.

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Audits May Only Be Initiated by Mail, and Never by Phone.

- By internal memorandum dated May 20, 2016, the IRS directed its employees to initiate contact with taxpayers exclusively by mail when commencing an audit, and no longer by phone.

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- The IRS stated that it was changing its long-standing policy of making initial contact by telephone in response to the threat of phone scams, phishing, and identity theft.
- The IRS first announced on May 6, 2016, that it would no longer initiate audits by phone. The IRS will allow taxpayers 14 calendar days from the mailing of the audit notice letter to respond before initiating contact with the taxpayer by phone if needed.

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New Way to Pay Taxes in Cash; 7-Eleven Is There for You.

- On April 6, 2016, the IRS announced in IR-2016-56 a new payment option for individuals who need to use cash to pay their tax liability and wish to do so without having to travel to an IRS taxpayer assistance center.
- The IRS has partnered with ACI Worldwide's OfficialPayments.com and the PayNearMe Company so that individuals can pay at more than 7,000 7-Eleven stores nationwide

Reminder: A Preparer Cannot Just Sign a Return for the Client/Taxpayer.

- The case of *Levi v. Comm'r*, T.C. Memo. 2015-118, is a reminder of the rules as to when an agent may sign an income tax return on behalf of a client/taxpayer such that the return is a valid return. This issue is important to preparers for two reasons:
- If the agency rules are not followed and the return is invalid because the return is not signed by an authorized person, late filing penalties may apply;

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- A preparer should be cautious in signing a return on behalf of the client, even if the agency rules are met, because such a preparer then become individually liable with respect to the return.

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Voluntary Disclosure Program Is Now Open-Ended.

- In general, individuals must fulfill this requirement by answering questions regarding foreign accounts or foreign trusts that are part of Part III of Schedule B of Form 1040. Taxpayers who answer “yes” in response to questions regarding foreign accounts must then file Treasury Department Form TD F 90-22.1, a Foreign Bank Account Report or “FBAR.” This form must be filed with the Department of the Treasury and not as part of the tax return that is filed with the IRS.

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Audit Rates, Collection Data, and Tax Statistics.

Overview. - In March 2016 the IRS released enforcement statistics for fiscal year 2015 in its 2015 Data Book.

- The overall audit rate for individuals was 0.83%, the third consecutive year the rate was below 1.0%. From 2007 through 2012, the overall rate had exceeded 1.0%.
- The total number of IRS revenue officers, agents, and special agents has continued to fall since 2010, from 22,710 in fiscal 2010 to 16,694 in fiscal 2015. The decline in enforcement employees is due to IRS budget cuts since 2010.

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- The IRS is projecting a continuing overall audit rate below 0.9%, claiming it lacks employees to maintain a higher rate.
- Corporate audit rates for all sizes of large corporations have dropped significantly since 2013, while the audit rate for small corporations (assets of less than \$10 million) has stayed steady at about 1.0% (0.9% for 2015).

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- Audit rates for S corporations and partnerships remained steady at 0.4% for S corporations with a slight rise to 0.5% for partnerships.
- Due to budget concerns, the IRS has put on hold two information technology initiatives: an information reporting and document review to match Forms 1099-K and returns, and a return review program to find fraud and improper refunds.

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Audit Rates for Individuals.

- The IRS data concerning audit rates is reflected in the following tables. Note that a “Field” examination is an examination conducted “in person” at either an IRS office or the taxpayer’s place of business. A “Correspondence” examination is one conducted other than “in person” such as through the mail, including computer generated notices sent to taxpayers.

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Taxpayers were in the “High Income” category if they had incomes of \$100,000 or more for years through 2007. In 2008 the IRS started reporting rates for individuals with income of \$200,000 or more rather than of \$100,000 or more. Audit rates declined dramatically after the IRS Restructuring and Reform Act of 1998 was enacted. Rates from 1996 are shown to provide a comparison of current rates and rates before that Act. Totals may not add due to rounding

SEE PAGE 12-56 THROUGH 12-59

Recent Cases Involving OICs.

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COURSE OBJECTIVES

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- Tax Practice & Procedures
- The Gramm-Leach-Bliley Act
- Safeguarding Taxpayer Data
- Circular 230
- Practice Questions

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The Gramm-Leach-Bliley Act

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39**THE GRAMM-LEACH-BLILEY ACT**

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The Gramm-Leach-Bliley Act (the "Act") was signed by President Clinton in November, 1999. Section 504(a) of the Act requires the Federal Trade Commission to regulate the application of the Act to "financial institutions." Tax preparers and other providers of financial services are included in the Act's definition of "financial institutions".

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40**THE GRAMM-LEACH-BLILEY ACT**

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In 1999 Congress passed the Gramm-Leach-Bliley Act (GLB)
Designed to protect the private information of consumers from unwanted disclosure

Applied to "financial institutions" in the private sector

No direct application to federal government operations

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THE GRAMM-LEACH-BLILEY ACT

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What are the two relevant parts of the Gramm-Leach-Bliley Act?

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THE GRAMM-LEACH-BLILEY ACT

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GLB has two relevant parts:

Information privacy – this is the part, effective in 2001, which mandated consumer privacy notices and "opt – out" provisions for information sharing (the Privacy Rule)

Information security – effective in 2003 and 2004, which mandated procedures for safeguarding non-public personal information (the Safeguards Rule)

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GLB and Information Privacy – The Privacy Rule

Financial institutions (Tax Practices) must establish written policies on the protection of private customer information.

The policies must be disclosed to new customers and to all customers annually thereafter. Customers have the ability to "opt-out;" that is, to deny permission to the financial institution (Tax Office) to share such information with unaffiliated third parties.

In a nut shell, the regulation requires tax preparers and other professionals who provide financial services, as sole proprietors or in firms, to provide all clients who they do business with after July 1, 2001 with notice of their privacy policy. The privacy policy needs to be presented in a clear and conspicuous written form

A distinct paragraph within a standard letter may also satisfy the clear and conspicuous rule. Whatever form the notice is given it should be labelled as the practitioner's privacy policy.

45**THE GRAMM-LEACH-BLILEY ACT**

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We could recommend use of the following simple privacy policy statement,

Privacy Policy

"We do not disclose any non-public personal information about our customers or former customers to anyone, except as instructed to do so by such customers or as required by law. We restrict access to non-public personal information to those professionals necessary to [brief description of service provided] and we maintain physical, electronic, and procedural safeguards to guard your non-public personal information."

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46**THE GRAMM-LEACH-BLILEY ACT**

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If your practice goes beyond the scope of tax return preparation or if you do routinely share return information such as name, address, and phone number (directory information) with affiliated financial service professionals, we would recommend a somewhat more expansive privacy policy statement. I.R.C. Section 6713 prohibits any disclosure of return information, to include directory information, with non-affiliated third parties

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The significant difference, other than the broader disclosure represented below, is that the Act requires practitioners who do share information with "affiliated third parties" to present clients [referred to as customers by the Act] with the opportunity to "opt-out." When a client opts-out the Act prohibits the practitioner from divulging any "non-public" information to even an affiliated third party for any purpose. The Act will treat even directory information as "non-public."

Privacy Policy

"We do not disclose any non-public personal information about our customers or former customers to anyone, except as instructed to do so by such customers, or as required by law. Further exception is made with respect to directory information, limited to [describe directory information, e.g. name, address, and phone number], we may refer this information to an affiliated financial service professional where such referral is thought to be in your interest. Please advise us if instead you would require us to hold all information, including basic directory information, confidential under any circumstance. We restrict access to non-public personal information to those professionals necessary to [brief description of service provided] and we maintain physical, electronic, and procedural safeguards to guard your non-public personal information."

Accounting for Cybersecurity:

A guide to Data Security for Accountants and Tax Professionals

**AccountingToday

Accounting for Cybersecurity

- cyber attacks occur on a daily basis
 - financial firms are prime targets

- many cyber thieves prefer to set their sights on smaller firms
 - security protocols are more lax and more easily compromised

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Attractive Targets- Accountants

- possess a trove of sensitive information about their clients
 - Social Security numbers
 - Birthdates
 - Addresses
 - Names of family members

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Attractive Targets- Accountants

- accountants may not have the latest technology solutions needed to thwart attacks

- small businesses or sole proprietorships typically have neither the resources nor expertise to tackle the most sophisticated cyber threats

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Attractive Targets- Accountants

- accountants increasingly expand beyond tax preparation into wealth management
 - accountants will have not only the standard tax information, but access to bank and brokerage accounts as well

Lapses in data security are not a rare occurrence

- one in 10 accountants report having lost client information in some way such as a lost thumb drive or laptop
- nearly 25% of accountants say that they have had a client be the victim of a data breach and about 75% have had clients who were the victims of identify theft

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Cyber threats are a growing problem

- In 2015, the United States was hit with 77,000 attacks, a 10% jump from the year prior

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Cyber threats are a growing problem

- the Internal Revenue Service was hacked in 2015, resulting in data being stolen for more than 700,000 taxpayers
- in 2013, more than \$5 billion in fraudulent refunds were paid out to cyber thieves

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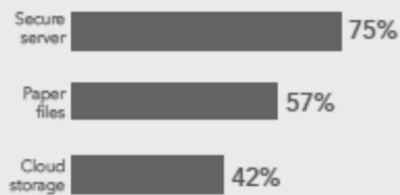
Cyber threats are a growing problem

- The current security setups at most accounting firms are lacking
- Many accountants are not using cloud storage; the most secure option for small businesses

Cyber threats are a growing problem

- In house servers, provide direct control; require both a substantial financial outlay to set up and ongoing maintenance
- Paper files have limitations; vulnerable to theft & damage

FIGURE 3. Accountants not Relying on Secure Data Security Solutions
Q. How do you maintain confidential client information in your practice?



n = 284 (multi-select)
Source: SourceMedia Research,
Business Issues Survey, July 2016

Take Charge: Best Practices for Data Security

- Mind your business
- Make someone accountable
- Automate software updates
- Put up a firewall
- Embrace encryption
- Be careful with Wifi

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Accounting for Cybersecurity

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Take Charge: Best Practices for Data Security

- Educate your clients
- Consider insurance
- Use strong passwords

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Accounting for Cybersecurity

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Take Charge: Best Practices for Data Security

- Use strong passwords
 - Differentiate
 - Keep it a secret
 - Log on/log off
 - Watch where you use them
 - Change it up

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Take Charge: Best Practices for Data Security

- Use strong passwords
 - Go for complexity
 - Don't write it down
 - Avoid Wifi

GLB and Information Security

The Safeguard Rule

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THE SAFEGUARDS RULE

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The Safeguards Rule is broader than the already-broad definition of "financial institutions found in the Privacy Regulations, and include organizations which may collect covered information from "financial institutions"

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THE SAFEGUARDS RULE

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Who does the Safeguard Rule apply to?

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The FTC says both the Safeguards Rule and the Privacy Rule apply to:

Organizations which include not only banks, securities firms, and insurance companies, but also companies providing many other types of financial products and services to consumers, including lending, brokering or servicing any type of consumer loan, transferring or safeguarding money, providing residential real estate settlement services (including brokers), and an array of other activities, including appraising real estate.

Safeguarding taxpayer information is a top priority for the Internal Revenue Service. It is the responsibility of governments, businesses, organizations, and individuals that receive, maintain, share, transmit, or store taxpayers' personal information.

Overview:

- Maintain a list of all the locations where you handle or store taxpayer information such as office buildings, self-storage facilities, residence, temporary return preparation sites, filing cabinets, computers, zip drives, or USB removable media.
- Assess the risk and the impact of unauthorized access, use, disclosure, modification or destruction of the taxpayer information you handle or store.
- Limit access to taxpayer information you handle or store and other sensitive data to specifically authorized and designated individuals.

Overview:

- Write and follow an Information Security Plan that shows how you are addressing risks. There are examples of Information Security Plans on the internet.
- Specify in contracts with service providers the safeguards they must follow. Monitor how contractors handle taxpayer information.
- Test, monitor, and revise your Information Security Plan on a periodic basis.

Overview:

- Put in place additional safeguards as needed. The FTC offers tips for businesses to protect against breaches and identity theft.
- Provide privacy notices and practices to your customers, if required by the Federal Trade Commission Privacy Rule.
- Follow your federal, state, and local laws and regulations.

The Need to Safeguard Taxpayer Data

Taxpayer data is defined as any information that is obtained or used in the preparation of a tax return (e.g., income statements, notes taken in a meeting, or recorded conversations). Whether you are paid or unpaid for your services, a one person operation or a large corporation, have one client or thousands, it is critical to protect taxpayer data.

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SAFEGUARDING TAXPAYER DATA

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What is the reasoning for safeguarding client data?

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SAFEGUARDING TAXPAYER DATA

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Putting safeguards in place helps prevent fraud and identity theft, and enhances customer confidence and trust.

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75**SAFEGUARDING TAXPAYER DATA**

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There are a growing number of laws, regulations, standards, and best practices that cover the privacy and security of taxpayer data. You should be aware of this.

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76**SAFEGUARDING TAXPAYER DATA**

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This outline is a start for you to provide guidelines on establishing safeguards that help you:

- Preserve the confidentiality and privacy of taxpayer data by restricting access and disclosure;
- Protect the integrity of taxpayer data by preventing improper or unauthorized modification or destruction;
- Maintain the availability of taxpayer data by providing timely and reliable access and data recovery.

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77**SAFEGUARDING TAXPAYER DATA**

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Financial institutions as defined by FTC include professional tax preparers, data processors, their affiliates, and service providers who are significantly engaged in providing financial products or services.

They must take the following steps to protect taxpayer information. Other businesses, organizations, and individuals handling taxpayer information should also follow these steps because they represent best practices for all.

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78**SAFEGUARDING TAXPAYER DATA**

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- Take responsibility or assign an individual or individuals to be responsible for safeguards;
- Assess the risks to taxpayer information in your office, including your operations, physical environment, computer systems, and employees, if applicable. Make a list of all the locations you keep taxpayer information (computers, filing cabinets, bags, and boxes taxpayers may bring you);
- Write a plan of how you will safeguard taxpayer information. Put appropriate safeguards in place;

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79**SAFEGUARDING TAXPAYER DATA**

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- Use only service providers who have policies in place to also maintain an adequate level of information protection defined by the Safeguards Rule; and
- Monitor, evaluate, and adjust your security program as your business or circumstances change.

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80**SAFEGUARDING TAXPAYER DATA**

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To safeguard taxpayer information, you must determine the appropriate security controls for your environment based on the size, complexity, nature, and scope of your activities. Security controls are the management, operational, and technical safeguards you may use to protect the confidentiality, integrity, and availability of your customers' information.

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81**SAFEGUARDING TAXPAYER DATA**

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What are some examples of safeguarding security controls?

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82**SAFEGUARDING TAXPAYER DATA**

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Examples of security controls are:

1. Locking doors to restrict access to paper or electronic files;
2. Requiring passwords to restrict access to computer files;
3. Encrypting electronically stored taxpayer data;
4. Keeping a backup of electronic data for recovery purposes; and
5. Shredding paper containing taxpayer information before throwing it in the trash.

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Administrative Activities

- Complete a Risk Assessment.
- Identify the risks and potential impacts of unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that can be used to access taxpayer data.
- How vulnerable is your customer's data to theft, disclosure, unauthorized alterations, or unrecoverable loss?

Administrative Activities

What can you do to reduce the impact to your customers and your business in such an event?

What can you do to reduce vulnerability?

Administrative Activities

Write and follow an Information Security Plan that:

- Addresses every item identified in the risk assessment.
- Defines safeguards you want affiliates and service providers to follow.
- Requires a responsible person to review and approve the Information Security Plan.
- Requires a responsible person to monitor, revise, and test the Information Security Plan on a periodic (recommended annual) basis to address any system or business changes or problems identified.

Administrative Activities

Periodically (recommended annually) perform a Self-Assessment to:

- Evaluate and test the security plan and other safeguards you have in place.
- Document information safeguards deficiencies. Create and execute a plan to address them.

Administrative Activities

- Retain a copy of the Self-Assessment and ensure it is available for any potential reviews.
- If required by the FTC Privacy Rule, provide privacy notices and practices to your customers.

Administrative Activities

- Specify in contracts with service providers the safeguards they must follow and monitor how they handle taxpayer information.
- Ask service providers to give you a copy of their written security policy on safeguarding information.

Facilities (Office) Security

- Protect from unauthorized access and potential danger (e.g., theft, floods, and tornados) all places where taxpayer information is located.
- Write procedures that prevent unauthorized access and unauthorized processes.

Facilities (Office) Security

- Assure that taxpayer information, including data on hardware and media, is not left un-secured on desks or photocopiers, in mailboxes, vehicles, trash cans, or rooms in the office or at home where unauthorized access can occur.

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Facilities (Office) Security

One step further- scale down and only keep what is needed for the business and task at hand

- If there is not a business need for sensitive information, don't keep it
- Use SS Numbers only for required purposes. Don't use SSN unnecessarily...as a customer identification number
- Don't keep customer credit card information on file
- Develop a written records retention policy to identify info that must be kept, how to secure it, how long to keep it, and how to dispose of it securely when no longer needed

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92**SAFEGUARDING TAXPAYER DATA**

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Facilities (Office) Security

Properly dispose of documents no longer need for business

- Dispose of paper records properly
 - Shredding, burning, pulverizing
- Erase data prior to trashing old computers and storage devices
 - Use secure software data erasing, just deleting files with keyboard/mouse command is not sufficient
- Make sure employees working from home use the same procedures

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Facilities (Office) Security

- Authorize and control delivery and removal of all taxpayer information, including data on hardware and media.

- Lock doors to file rooms and/or computer rooms.
 - Don't keep files laying around on office desk
 - Have employees lock computers when away from their workspace

- Provide secure disposal of taxpayer information, such as shredders, burn boxes, or temporary file areas until it can be securely disposed.

Personnel Security

- Create and distribute Rules of Behavior that describe responsibilities and expected behavior regarding computer information systems as well as paper records and usage of taxpayer data. Have all information system users complete, sign, and submit an acknowledgement that they have read, understood, and agree to comply with the rules of behavior.

Personnel Security

- Ensure personnel from third-party providers such as service bureaus, contractors, and other businesses providing information technology services meet the same security requirements as those applied to your personnel.
- Address Rules of Behavior for computer system management.
- When interviewing prospective personnel, explain the expected Rules of Behavior.

Personnel Security

- When possible, perform a background and/or reference check on new employees who will have contact with taxpayer information. Conduct background screenings that are appropriate to the sensitivity of an assigned position.

Personnel Security

- Screen personnel prior to granting access to any paper or electronic data. This will help ensure their suitability for a position requiring confidentiality and trust.
- Have personnel who will have access to taxpayer information sign nondisclosure agreements on the use of confidential taxpayer information.

Personnel Security

- Develop and enforce formal compliance policies and processes, including possible disciplinary action, for all personnel who do not comply with the businesses' established information security policies and procedures.
- Terminate access to taxpayer information (e.g., login IDs and passwords) for those employees who are terminated or who no longer need access.

Personnel Security

- For each employee who is terminated, conduct an exit interview and ensure the employee returns property that allows access to taxpayer information (e.g., laptops, media, keys, identification cards, and building passes).
- Train staff on Rules of Behavior for access, non-disclosure, and safeguards of taxpayer information. Provide refresher training periodically.

Information Systems Security

- Information systems include both automated and manual systems made up of people, machines, and/or methods for collecting, processing, transmitting, storing, archiving, and distributing data.

101**SAFEGUARDING TAXPAYER DATA**

MISEA - Ethics

Information Systems Security

- Grant access to taxpayer information systems only on a valid need-to-know basis that is determined by the individual's role within the business.
- Put in place a written contingency plan to perform critical processing in the event that your business is disrupted. It should include a plan to protect both electronic and paper taxpayer information systems. Identify individuals who will recover and restore the system after disruption or failure.

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102**SAFEGUARDING TAXPAYER DATA**

MISEA - Ethics

Information Systems Security

- Periodically test your contingency plan.
- Back up taxpayer data files regularly (e.g., daily or weekly) and store backup information at a secure location.
- Maintain hardware and software as needed and keep maintenance records.

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103**SAFEGUARDING TAXPAYER DATA**

MISEA - Ethics

Computer Systems Security

- Identify and authenticate computer system users who require access to electronic taxpayer information systems before granting them access.

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104**SAFEGUARDING TAXPAYER DATA**

MISEA - Ethics

Computer Systems Security

You can manage user identities by:

- Identifying authorized users of electronic taxpayer information systems and grant specific access rights/privileges.
- Assigning each user a unique identifier.
- Verifying the identity of each user.
- Disabling user identifiers after an organization-defined time period of inactivity.
- Archiving user identities.

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SAFEGUARDING TAXPAYER DATA

MISEA - Ethics

Computer Systems Security

- Implement password management procedures that require strong passwords.
- Require periodic password changes.
- Disable and remove inactive user accounts.

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106

SAFEGUARDING TAXPAYER DATA

MISEA - Ethics

Computer Systems Security

- Don't store sensitive data on any computer with an internet connection unless it is essential for business
- Regularly run up-to-date anti virus and anti spyware programs on all computers and servers

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Computer Systems Security

- Protect electronic taxpayer information systems connected to the Internet with a barrier device (e.g., firewall, router, or gateway). Any failure of these devices should not result in an unauthorized release of taxpayer data.
- When storing taxpayer information electronically, consider following best practices and store it on separate secure computers or media that are not connected to a network and that are password protected and encrypted.

Computer Systems Security

- Encrypt taxpayer information when attached to email.
- Encrypt taxpayer information when transmitting across networks.
- Regularly update firewall, intrusion detection, anti-spyware, anti-adware, anti-virus software, and security patches.
- Monitor computer systems for unauthorized access by reviewing system logs.

109**SAFEGUARDING TAXPAYER DATA**

MISEA - Ethics

Media Security

- Store computer disks, removable media, tapes, compact disks, flash drives, audio and video recordings of conversations and meetings with taxpayers, and paper documents in a secure location, cabinet, or container.
- Secure media storage areas, including rooms, cabinets, and computers by locks or key access. Where appropriate, employ an automated mechanism to ensure only authorized access.

111

110**SAFEGUARDING TAXPAYER DATA**

MISEA - Ethics

Media Security

- Restrict authorized access to media storage.
- Limit removal of taxpayer information to authorized persons and perform information access audits regularly.

112

111**SAFEGUARDING TAXPAYER DATA**

MISEA - Ethics

Media Security

- Securely remove all taxpayer information when disposing of computers, diskettes, magnetic tapes, hard drives, or any other electronic media that contain taxpayer information. The FTC Disposal Rule has information on how to dispose of sensitive data.
- Shred or burn paper documents before discarding them.

113

112**SAFEGUARDING TAXPAYER DATA**

MISEA - Ethics

Reporting Incidents

- Safeguarding personally identifiable taxpayer information is of critical importance to retaining the confidence and trust of taxpayers. Appropriately handling information security incidents is also very important to retaining the confidence and trust of taxpayers. An information security incident is an adverse event or threat of an event that can result in an unauthorized disclosure, misuse, modification, or destruction of taxpayer information. If you believe an information security incident has occurred that affects the confidentiality, integrity, or availability of taxpayer data or the ability for the taxpayer to prepare or file a return, you may need to report the incident.

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113

COMMISSIONER JOHN KOSKINEN

MISEA - Ethics



John Koskinen is the 48th IRS Commissioner. As Commissioner, he presides over the nation's tax system, which collects approximately \$3.1 trillion in tax revenue each year. This revenue funds most government operations and public services. Mr. Koskinen manages an agency of about 90,000

employees and a budget of approximately \$10.9 billion. In his role leading the IRS, Mr. Koskinen is working to ensure that the agency maintains an appropriate balance between taxpayer service and tax enforcement and administers the tax code with fairness and integrity.

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114

COMMISSIONER JOHN KOSKINEN

MISEA - Ethics

- September 21, 2016 – Commissioner John Koskinen testified in front of the House Judiciary Committee in Washington
- Facing impeachment for overseeing IRS staff who deleted backup tapes containing email communications sent or received by Lois Lerner which were subpoena by congress for an ongoing investigation
- Koskinen also mislead congress regarding the hard-drive crash and destruction of back up tapes that held Lerner's email

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MISEA - Ethics

Circular 230

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CIRCULAR 230

MISEA - Ethics

- Sets forth rules under which tax preparers can represent clients before the IRS.
- OPR oversees practice conduct.

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OFFICE OF PROFESSIONAL RESPONSIBILITY

MISEA - Ethics

- Stephen A. Whitlock has been named as the Director of the OPR effective 8/3/2015.
- Steve previously served as the Director, Whistle-blower Office where, as the first to hold this role, he oversaw development of the program, set policy and provided oversight for Service action on information provided by whistle-blowers'.
- Prior to that, Steve held the position of Deputy Director, Office of Professional Responsibility.

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OFFICE OF PROFESSIONAL RESPONSIBILITY

MISEA - Ethics

- OPR's vision, mission, strategic goals and objectives support effective tax administration by ensuring all tax practitioners, tax preparers, and other third parties in the tax system adhere to professional standards and follow the law.

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OFFICE OF PROFESSIONAL RESPONSIBILITY

MISEA - Ethics

OPR's goals include the following:

- Increase awareness and understanding of Circular 230
- Apply the principles of due process to the investigation, analysis, enforcement and litigation of Circular 230 cases and
- Build, train and motivate a cohesive OPR team.

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7701 (A)(36) TAX RETURN PREPARER

MISEA - Ethics

The term "tax return preparer" means any person who prepares for compensation or who employs one or more persons to prepare for compensation, any return of tax imposed by this title or an claim for refund of tax imposed by this title.

- Exceptions – Furnishes typing (inputting) reproducing, or other mechanical assistance
- Prepares a return or claim for refund of the employer, whom he/she is regularly employed
- Others

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REG 301.7701-15 (B)(3)

MISEA - Ethics

- Only a person who prepares all or a substantial portion of a return or claim for refund shall be considered to be a tax return preparer.
- A person who renders tax advice on a position that is directly relevant to the determination of the existence, characterization, or amount of an entry on a return or claim for refund will be regarded as having prepared that entry.
- A single tax entry may constitute a substantial portion of the tax required to be shown on a return.

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SUPERVISED PREPARER

MISEA - Ethics

Who is a Supervised Preparer?

124

123**SUPERVISED PREPARERS**

MISEA - Ethics

- Supervised preparers are individuals who do not sign
- Are not required to sign returns they prepare
- Are employed by firms at least 80% owned by EA's, CPA's or Attorneys
- Are supervised by an EA, CPA or attorney who signs the returns prepared by the supervised preparer.
- Supervised preparers must provide the PTIN of their supervisor when obtaining or renewing their own PTIN

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124**CIRCULAR 230**

MISEA - Ethics

Why is it important for a tax preparer to exercise due diligence?

126

125

§ 10.21 – CLIENT OMISSION

MISEA - Ethics

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 (tax) laws, 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.

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126

§ 10.22- DILIGENCE AS TO ACCURACY

MISEA - Ethics

Can you explain what due diligence is?

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§ 10.22- DILIGENCE AS TO ACCURACY

MISEA - Ethics

Due diligence, in the context of tax return preparation; is the diligence or care that a reasonable preparer would use under the same circumstances. If income is understated or deductions or credits are overstated on a client's return, the IRS will look at whether a practitioner was reckless in failing to review the client's information and whether the practitioner showed a lack of regard in the proper questioning of clients.

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§ 10.22- DILIGENCE AS TO ACCURACY

MISEA - Ethics

- As tax practitioners we need to take the time and effort necessary to question without actually auditing their clients.
- By taking the questioning "**far enough**" to make accurate and reasonable determinations based on the clients' facts and circumstances, the preparer has met his/her due diligence requirements.
- The due-diligence standards once allowed a Tax Return Preparer to rely in good faith and without verification on information provided by the client, 3rd parties, and information contained in previously filed returns....

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§ 10.22- DILIGENCE AS TO ACCURACY

MISEA - Ethics

Documentation is Important!!

- If you have a high speed scanner; scan in your client's documentation.
- If you use work papers ... document your questions and the client's answers along with any conclusions you have drawn.

Remember – If your questions and the client's answers are not documented, IRS says it never happened!!

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§ 10.22- DILIGENCE AS TO ACCURACY

MISEA - Ethics

In general – A practitioner must exercise due diligence.

- In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to the IRS
- In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury
- In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the IRS

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§ 10.24 Assistance from or to disbarred or suspended persons
and former Internal Revenue Service employees

MISEA - Ethics

A practitioner may not, knowingly and directly or indirectly:

- Accept assistance from or assist any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter or matters constituting practice before the Internal Revenue Service.
- Accept assistance from any former government employee where the provisions of § 10.25 or any Federal law would be violated.

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132

§10.28 CLIENT RECORDS

MISEA - Ethics

What are client records?

What belongs to the Client?

As a preparer what rights do you have?

134

132**§10.29 CONFLICTING INTEREST**

MISEA - Ethics

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.

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133**§10.29 CONFLICTING INTEREST**

MISEA - Ethics

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 copies of written consents must be retained for at least 36 month, from the date of the conclusion of the representation.

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§10.29 CONFLICTING INTEREST

MISEA - Ethics

- (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.

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.

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§10.29 CONFLICTING INTEREST

MISEA - Ethics

When might a conflict of interest exist?

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§10.29 CONFLICTING INTEREST

MISEA - Ethics

When might a conflict of interest exist?

- Husband and Wife – Divorce?
- Corporation and shareholder
- Partnership and Partner

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§10.29 CONFLICTING INTEREST

MISEA - Ethics

Waiver of Conflict of Interest- Divorce

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Waiver of Conflict of Interest- Divorce

This document outlines the limitations and understanding inherent to preparing tax returns and other documents for individuals who are in the process of dissolution of their marriage or who were previously married. I cannot prepare your [insert tax year and type of filing] without the signed recognition by you of the following facts.

Performing this service for both of you presents an inherent potential conflict of interest.

While many of your interests may be unrelated or coincide, certain conflicts of interest may currently exist among you, and others may arise in the future. In theory, at least, each of you would wish to maximize your specific interests related to the services our firm will provide. Maximization of the interests of one party may result in a disadvantage to the other party, at least to some degree. Were we representing only one of you, we would actively pursue the best interests of that person. By contrast, the result of our concurrent representation may be that each of you may take into consideration or compromise with respect to issues of the other, and accept outcomes that are significantly less advantageous than could be secured to one or the other of you if each of you had retained independent tax advisors.

Waiver of Conflict of Interest- Divorce

Therefore, prior to further involvement in the project, we request that you consent and agree to the following:

- o You acknowledge that you have been made aware of the actual conflicts known at this time and the possibility of future conflicts between you.
- o You agree that we may represent each of you concurrently in connection with the project described in this memorandum, and you waive any conflict of interest which now exists or may arise in the course of such representation. You further agree that we may continue to represent either party in connection with matters not directly related to this project.
- o Notwithstanding the foregoing, in the event a dispute develops between any of you and the other participants, you agree that we may discontinue his representation of either party.
- o I cannot place information on your return that is in conflict with information I am also using in preparing your spouse's or former spouse's return.

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§10.29 CONFLICTING INTEREST

MISEA - Ethics

Waiver of Conflict of Interest- Divorce

You should note that any information provided to us by one of you may be shared with the other, without limitation. Each of you authorizes us to disclose their tax returns and confidential information to the other. This consent is valid for a period of three (3) years prior, through one (1) year following, the date of signature below.

If you are still married at the end of the tax year (i.e., December 31), you have the choice of filing a married filing joint or a married filing separate tax return. If you are not married at the end of the tax year, you may not file jointly. If you have a dependent child or children, one or both of you may be able to file as head of household. Please ask if you do not understand your filing status. As usual, you both must review the finished returns. Make sure you understand the information on them and that all income has been reported.

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141

§10.29 CONFLICTING INTEREST

MISEA - Ethics

Waiver of Conflict of Interest- Divorce

If you file a joint return, each of you is accepting joint and/or separate responsibility for any tax assessed on the return. That means that each filer can be held responsible for any and all additional tax, whether it is an unpaid liability on the return as submitted, or additional tax assessed later by the taxing authorities.

Although we do not give legal advice, you may want to make sure that your dissolution agreement states that any unpaid tax will be the responsibility of the spouse who generated that income. (Some states will honor this, although the IRS will not.) Please ask if you have further questions about your potential liability.

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§10.29 CONFLICTING INTEREST

MISEA - Ethics

Waiver of Conflict of Interest- Divorce

If we prepare joint returns for you that are later challenged by the IRS, we are not allowed to represent either spouse separately. We may represent both of you only if we believe we can do so objectively and with fairness to both, and if you both give written consent.

By signing below you consent to the concurrent representation subject to the potential conflict of interest as described above.
ACCEPTED AND AGREED:

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143

§10.30 FEES

MISEA - Ethics

Do you know the rules about fee's?

146

144

§10.30 FEES

MISEA - Ethics

A practitioner may publish the availability of a written schedule of fees and disseminate the following fee information:

- Fixed fees for specific routine services.
- Hourly rates.
- Range of fees for particular services.
- Fee charged for an initial consultation.

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§10.30 FEES

MISEA - Ethics

- Any statement of fee information concerning matters in which costs may be incurred must include a statement disclosing whether clients will be responsible for such costs.
- A practitioner may charge no more than the rate(s) published for at least 30 calendar days after the last date on which the schedule of fees was published.

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§10.30 FEES

MISEA - Ethics

When can a practitioner charge a contingent fee?

149

146

§10.31 NEGOTIATION OF TAXPAYER CHECKS

MISEA - Ethics

- A practitioner may not endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect of a Federal tax liability.

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§ 10.34 RELYING ON INFORMATION FURNISHED BY CLIENTS

MISEA - Ethics

- A practitioner advising a client to take a position on a tax return, document, affidavit or other paper submitted to the IRS, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client.

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§ 10.34 RELYING ON INFORMATION FURNISHED BY CLIENTS

MISEA - Ethics

- 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 furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete

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§ 10.34 RELYING ON INFORMATION FURNISHED BY CLIENTS

MISEA - Ethics

- 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 furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete

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§ 10.34

MISEA - Ethics

Tax returns.

- A practitioner may not wilfully, recklessly, or through gross incompetence —
- Sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that —
 - Lacks a reasonable basis
 - Is a wilful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner

154

Documents, affidavits and other papers —

- 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.

Documents, affidavits and other papers —

- 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.

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§ 10.34 DUE DILIGENCE STANDARDS

MISEA - Ethics

Advising clients on potential penalties —

- A practitioner must inform a client of any penalties that are reasonably likely to apply to the client with respect to —
- A position taken on a tax return if —
 - The practitioner advised the client with respect to the position;
 - or The practitioner prepared or signed the tax return; and Any document, affidavit or other paper submitted to the Internal Revenue Service.

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§ 10.34 DUE DILIGENCE STANDARDS

MISEA - Ethics

Advising clients on potential penalties —

- 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.
- 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.

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§10.35 COMPETENCE

MISEA - Ethics

- 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.

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§10.36 PROCEDURES TO ENSURE COMPLIANCE

MISEA - Ethics

Any individual subject to the provisions of this part who has (or individuals who have or share) principal authority and responsibility for overseeing a firm's practice governed by this part, including the provision of advice concerning Federal tax matters and preparation of tax returns, claims for refund, or other documents for submission to the Internal Revenue Service, must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying

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§10.36 PROCEDURES TO ENSURE COMPLIANCE

MiSEA - Ethics

Any such individual who has (or such individuals who have or share) principal authority as described in paragraph (a) of this section will be subject to discipline for failing to comply with the requirements of this section if—

- The individual through wilfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with this part,

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§10.36 PROCEDURES TO ENSURE COMPLIANCE

MiSEA - Ethics

The individual through wilfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that firm procedures in effect are properly followed, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this part.

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160

DUE DILIGENCE

MISEA - Ethics

What are the requirements for a tax preparer giving written advice?

163

161

§ 10.37 – REQUIREMENTS FOR WRITTEN ADVICE

MISEA - Ethics

- A practitioner may give written advice (including by means of electronic communication) concerning one or more Federal tax matters.

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162

§ 10.37 – REQUIREMENTS FOR WRITTEN ADVICE

MISEA – Ethics

The practitioner must—

- Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);
- Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know;
- Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter;
- Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable;

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§ 10.37 – REQUIREMENTS FOR WRITTEN ADVICE

MISEA – Ethics

- Relate applicable law and authorities to facts; and
- Not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

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§ 10.37 – REQUIREMENTS FOR WRITTEN ADVICE

MISEA - Ethics

- The final Regulations at 10.37 require practitioners to remove the need for tax professionals to ever use the Circular 230 disclaimers on documents, e-mails and any other written communications.

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INSTEAD OF A DISCLAIMER

MISEA - Ethics

CONFIDENTIALITY NOTICE:

This e-mail and any files transmitted with it are intended solely for the use of the individual or entity to whom they are addressed and may contain confidential and privileged information protected by law. If you received this e-mail in error, any review, use, dissemination, distribution, or copying of the e-mail is strictly prohibited. Please notify the sender immediately by return e-mail and delete all copies from your system.

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§10.51 INCOMPETENCE AND DISREPUTABLE CONDUCT

MISEA - Ethics

- Incompetence and disreputable conduct for which a practitioner may be sanctioned under §10.50 includes, but is not limited to
- Conviction of any criminal offense under the Federal Tax Laws
- Conviction of any criminal offense involving dishonesty or breach of trust.
- Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service.

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§10.51 INCOMPETENCE AND DISREPUTABLE CONDUCT

MISEA - Ethics

- Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury
- Solicitation of employment as prohibited under §10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or any officer or employee thereof.

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§10.51 INCOMPETENCE AND DISREPUTABLE CONDUCT

MISEA - Ethics

- wilfully failing to make a Federal tax return in violation of the Federal tax laws, or wilfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.
- wilfully assisting, counselling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any Federal tax law, or knowingly counselling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof.

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§10.51 INCOMPETENCE AND DISREPUTABLE CONDUCT

MISEA - Ethics

- Misappropriation of, or failure properly or promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the United States.
- Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, favor or thing of value.

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§10.51 INCOMPETENCE AND DISREPUTABLE CONDUCT

MISEA - Ethics

- Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, any Federal court of record or any Federal agency, body or board.

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171

§10.51 INCOMPETENCE AND DISREPUTABLE CONDUCT

MISEA - Ethics

- Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment or ineligibility of such other person.
- Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations or statements, knowing them to be false, or circulating or publishing malicious or libellous matter.

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172

§10.51 INCOMPETENCE AND DISREPUTABLE CONDUCT

MISEA - Ethics

- Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws.

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173

§10.51 INCOMPETENCE AND DISREPUTABLE CONDUCT

MISEA - Ethics

- wilfully failing to sign a tax return prepared by the practitioner when the practitioner's signature is required by Federal tax laws unless the failure is due to reasonable cause and not due to wilful neglect.
- wilfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code, contrary to the order of a court of competent jurisdiction, or contrary to the order of an administrative law judge

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174

§10.51 INCOMPETENCE AND DISREPUTABLE CONDUCT

MISEA - Ethics

- wilfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so by the Federal tax laws unless the failure is due to reasonable cause and not due to wilful neglect.
- wilfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number.

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§10.51 INCOMPETENCE AND DISREPUTABLE CONDUCT

MISEA - Ethics

- wilfully representing a taxpayer before an officer or employee of the Internal Revenue Service unless the practitioner is authorized to do so pursuant to this part.

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176

ADVERTISING

MISEA - Ethics

- The IRS is reminding practitioners that they should not include advertisements for their services when sending out W-2 forms.
- “A recent inquiry sent to the Issue Management Resolution System concerned restrictions on including practitioner advertising with Forms W-2 and other information returns,” the IRS said March 6 in an e-mail to payroll professionals.
- “As a reminder, no additional enclosures, advertising, promotional material, or a quarterly or annual report are permitted.”
- “Even a sentence or two on the year-end statement describing new services offered by the payer is not permitted,”

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ADVERTISING

MISEA - Ethics

A practitioner may not persist in attempting to contact a prospective client if the prospective client has made it known to the practitioner that he or she does not desire to be solicited.

Are there rules for:

- Radio / Television?
- Direct Mail?
- E Mail ?
- E Commerce ?

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MISEA - Ethics

- IRC Sec. 6695(a) requires the preparer to furnish a copy of the return to the client
- IRC Sec. 6695(b) requires the preparer to sign the return
- IRC Sec. 6695(c) requires the preparer to furnish an identification number
- IRC Sec. 6695(d) requires the preparer to retain a list of prepared returns
- IRC Sec. 6695(g) requires the preparer to comply with earned income credit due diligence rules

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179**ENGAGEMENT LETTER FOR TAX PREPARATION ONLY**

MISEA - Ethics

COURTESY OF DRAKE SOFTWARE:

April 5, 2016

Mr. & Mrs. Tax Payer 4085 Pay Lane
Los Angeles, CA 90210

RE: Preparation of Your 2016 Tax Returns Dear Tax Payer:

Thank you for choosing TAX SERVICE NAME to assist you with your 2014 taxes. This letter confirms the terms of our engagement with you and outlines the nature and extent of the services we will provide.

We will prepare your 2016 federal and state income tax returns. We will depend on you to provide the information we need to prepare complete and accurate returns. We may ask you to clarify some items but will not audit or otherwise verify the data you submit. An Organizer is enclosed to help you collect the data required for your return.

The Organizer will help you avoid overlooking important information. By using it, you will contribute to efficient preparation of your returns and help minimize the cost of our services.

We will perform accounting services only as needed to prepare your tax returns. Our work will not include procedures to find defalcations or other irregularities. Accordingly, our engagement should not be relied upon to disclose errors, fraud, or other illegal acts, though it may be necessary for you to clarify some of the information you submit. We will, of course, inform you of any material errors, fraud, or other illegal acts we discover.

The law imposes penalties when taxpayers underestimate their tax liability. Please call us if you have concerns about such penalties.

Should we encounter instances of unclear tax law, or of potential conflicts in the interpretation of the law, we will outline the reasonable courses of action and the risks and consequences of each. We will ultimately adopt, on your behalf, the alternative you select.

Our fee will be based on the time required at standard billing rates plus out-of-pocket expenses. Invoices are due and payable upon presentation. To the extent permitted by state law, an interest charge may be added to all accounts not paid within thirty (30) days.

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ENGAGEMENT LETTER FOR TAX PREPARATION ONLY

MISEA - Ethics

We will return your original records to you at the end of this engagement. You should securely store these records, along with all supporting documents, canceled checks, etc., as these items may later be needed to prove accuracy and completeness of a return. We will retain copies of your records and our work papers for your engagement for seven years, after which these documents will be destroyed.

Our engagement to prepare your 2016 tax returns will conclude with the delivery of the completed returns to you (if paper filing) or your signing, and the subsequent submittal, of your tax return (if e-filing). If you have not selected to e-file your returns with our office, you will be solely responsible to file the returns with the appropriate taxing authorities. Review all tax-return documents carefully before signing them.

To affirm that this letter correctly summarizes your understanding of the arrangements for this work, please sign the enclosed copy of this letter in the space indicated and return it to us in the envelope provided.

We appreciate your confidence in us. Please call if you have questions. Sincerely,

I.M. Tired, EA

(Both spouses must sign for preparation of joint returns.) Accepted By:

Taxpayer

Spouse

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ENGAGEMENT LETTER FOR TAX PREPARATION ONLY

MISEA - Ethics

Generic Tax Service
1888 Canadian Woodlands
Shelby Township, MI 48318

January 20, 2016
John Q. Public
1237 Motor City Boulevard Detroit, MI 48310

Dear Mr. Public:

The purpose of this letter is to confirm that you have retained Generic Tax Service to assist in the representation of your 2012 individual income tax return. This document outlines the terms of our engagement along with the nature and extent of the services we provide.

Ann Enrolled Agent, EA will assist you before the IRS on your appeal. Our firm establishes hourly rates based on years of experience, specialized training/practice, and level of professional attainment. The normal rate for Ms. Agent is \$200/per hour. This rate would normally cover meetings (in person and by phone) with you and negotiations with the IRS staff on your behalf. Ms. Agent has agreed to charge you a flat rate of \$1,000 for all services and include upcoming meetings with IRS Chief Counsel. Any services required beyond these proceedings will need to be renegotiated. Our engagement retainer of \$1,000.00 is due at the time of this signing.

Either party shall be free to terminate this arrangement at any time. In such event, you shall be responsible for all services performed up to receipt of the termination request plus any expenses and disbursements paid on your behalf. We will work with you to effect an orderly transition of documents into your possession. Unused retainer funds will be refunded at the time your records are returned. Your failure to respond to us in a reasonable time period or act on recommendations that are relevant to your case can be cause for the termination of this agreement.

Our services are rendered on the foregoing basis. If you have any objections or questions, please contact us at (800) 555-1212. We highly regard your business and feel all aspects of our representation are appropriate subjects for discussion. We look forward to working with you.

Sincerely,

Ann E. Agent, EA

Accepted by:

DATE:

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Used in preparation of this outline:

Circular 230

Circular 230 – IRS Tax Forum

Publication 4600

Graham-Leach-Bliley Act- Web

Accounting for Cybersecurity; presented by AccountingToday

Gary E. Skop, EA

President- Michigan Society of Enrolled Agents

AFS Tax savers, Inc.

734-464-3660

313-613-3408

Gary@afstaxsavers.com

- Go to www.afstaxsavers.com
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