

# TAXATION



*presents*

## **2024 Estate and Gift Tax Conference**

### **Panel 15: Wake Up Your Professional Responsibilities**

Friday, March 22, 2024

2:00pm - 2:45pm

Speakers: Sharyn Fisk

#### **Conference Reference Materials**

*Points of view or opinions expressed in these pages are those of the speaker(s) and/or author(s). They have not been adopted or endorsed by the California Lawyers Association and do not constitute the official position or policy of the California Lawyers Association. Nothing contained herein is intended to address any specific legal inquiry, nor is it a substitute for independent legal research to original sources or obtaining separate legal advice regarding specific legal situations.*

© 2020 California Lawyers Association  
All Rights Reserved

*The California Lawyers Association is an approved State Bar of California MCLE provider.*



# Wake-Up to Your Professional Responsibilities!

ABA 2024 Estate & Gift Tax Conference

Sharyn Fisk, Director  
IRS Office of Professional Responsibility

March 22, 2024



- Introduction
- Overview of Circular 230 & Office of Professional Responsibility
- Circular 230 and Today's Tax Practice
  - Remote Work
  - Competency & Technology
  - Artificial Intelligence (AI) Tools
  - Social Media
- Contact Information
- Resources & Guidance

---

# Agenda

---



# Introduction

- In recent years, there have been significant changes to the traditional landscape of working as a tax professional.
  - Expansion in remote work options (e.g., full-time or hybrid schedules, project-based vs. traditional full-time, non-traditional work schedules, telework locations, etc.);
  - Expectation of competency in technology and cybersecurity by non-traditional professional fields such as tax professionals;
  - Emergence of artificial intelligence tools to assist in work production and
  - Increased use of social media for solicitation.
- Tax professionals must assess and adjust their professional responsibility obligations under Circular 230 to encompass these new changes.



## **Circular 230 & OPR**



# Overview of Circular 230

- Circular 230 is a set of interrelated provisions intended to ensure that “practitioners” are “fit to practice” before the Treasury Department by having the requisite character, reputation, qualifications, and competency.
  - Enabling statute: 31 USC §330.
  - Circular 230 is a compendium of practice regulations contained in 31 CFR, Subtitle A, Part 10.
- The IRS Office of Professional Responsibility (OPR) is charged with enforcing Circular 230.
- The OPR also has authority under Delegation Orders 25-16 and 25-19 and Revenue Procedure 2014-42.



# Circular 230 – Statutory Authority

- Section 330 of Title 31 of the US Code authorizes —
  - Regulation of the practice of representatives of persons before the Treasury Department (including the IRS) and determinations of practitioner "fitness" to practice. 31 USC §330(a)
  - Types of disciplinary action, including monetary penalties. 31 USC §330(c)
  - Regulation of specific appraisers. 31 USC §330(d)
  - Standards for certain written advice. 31 USC §330(e)



# Office of Professional Responsibility

- Administers the laws and regulations governing the practice of certain tax professionals before the IRS.
- Interprets and applies the standards of practice for tax professionals in Circular 230 fairly and equitably.
- Investigates allegations of misconduct by tax practitioners in their practice before the IRS and imposes disciplinary sanctions if warranted.
- Supports the IRS's strategy to enhance enforcement of the Internal Revenue Code (IRC) by ensuring tax practitioners adhere to professional standards and follow the law.



# Fitness to Practice

- The principal focus of OPR's oversight of practitioners is their "fitness to practice."
  - Good character.
  - Good reputation.
  - Necessary qualifications to provide valuable service to the client.
  - Competency to advise and assist persons in presenting their cases before the IRS.



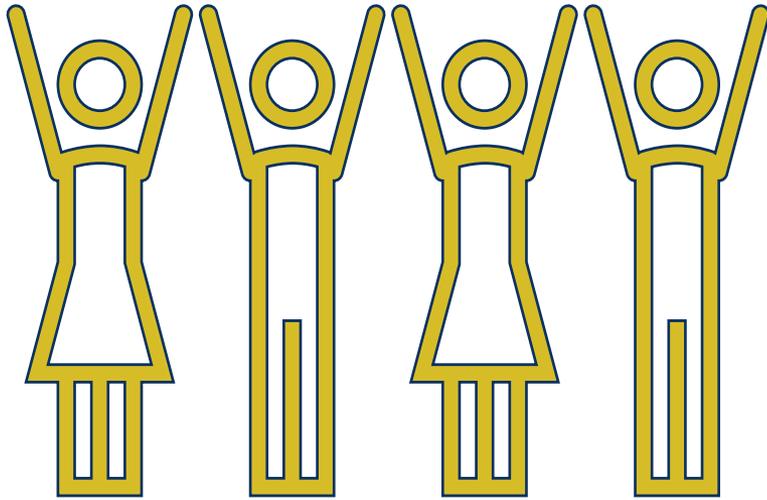


# “Practice” before the IRS

- All matters under laws or regulations administered by the IRS relating to a taxpayer's rights, privileges, or liabilities. See §10.2(a)(4)
  - Examples of “practice”:
    - Representing a client in an audit, before IRS Collections, or appearing before the IRS Independent Office of Appeals.
    - Preparing documents for submission to the IRS.
    - Advising clients regarding tax positions.
    - Providing written opinions (i.e., advice to clients regarding planned or completed transactions).
  - Not *mere* tax return preparation.



# Fitness to Practice



- **Attorneys**
- **CPAs**
- **Enrolled Agents**
- Enrolled Retirement Plan Agents
- Enrolled Actuaries
- Annual Filing Season Program Record of Completion Holders
- Appraisers who submit appraisals supporting tax positions



# Other Rules and Standards Applicable to Practitioners

- Although not enforced by OPR, the Internal Revenue Code imposes reporting and other requirements on practitioners who prepare returns or render advice, as well as other participants in the tax system (e.g., appraisers).
  - Includes penalties for not safeguarding taxpayer information.
  - Violating these provisions could subject tax practitioners to disciplinary action under Circular 230 as disreputable conduct.
- Most Circular 230 practitioners are also subject to rules governing attorneys, CPAs, enrolled agents, and appraisers issued by licensing authorities or other professional bodies.
  - Discipline by those licensing authorities may prompt reciprocal action by OPR.



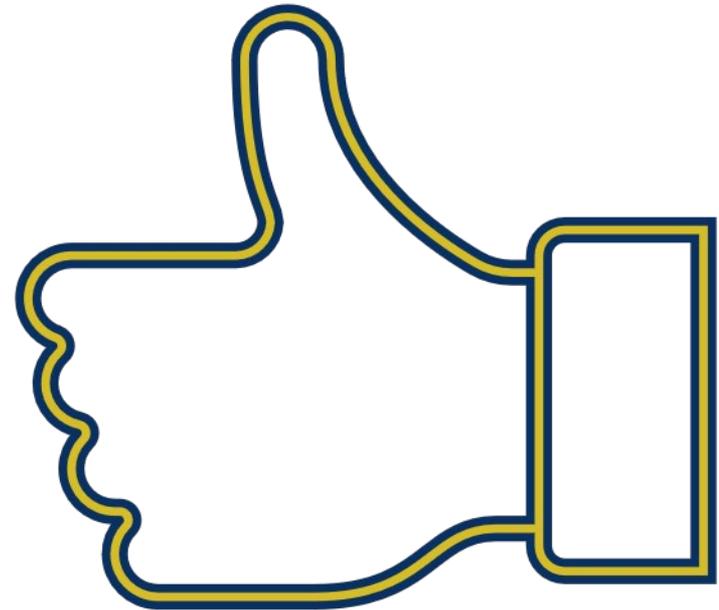
# Estate Planning Practice

- In estate planning practice, many of the transactions recommended are tax-driven.
  - To the extent that estate planners are providing tax advice, representing clients in tax matters, or preparing tax returns, they may be subject to the rules outlined in Treasury Circular 230, and the IRS OPR could have jurisdiction over their professional conduct.
  - It's crucial for estate planners and other tax professionals to stay informed about any updates or changes to these regulations, as they may evolve over time.



## Before we start . . . Best Practices – §10.33

- Section 10.33 encourages practitioners to adhere to “best practices” in advising on Federal tax issues and preparing or assisting in preparing a submission to the IRS.
- While section 10.33 is “aspirational” in effect, tax professionals are expected to observe best practices to preserve public confidence in the tax system.





## §10.33 – Best Practices

- Provide clients with the highest quality representation by adhering to “best practices” in providing advice on Federal tax issues and preparing/assisting in the preparation of a submission to the IRS.
  - Clearly communicate with your client on engagement terms;
  - Establish the relevant facts, evaluate the reasonableness of any assumptions or representations, relate applicable law to relevant facts, and reach a conclusion supported by the law and the facts;
  - Advise clients regarding the import of conclusions reached; and
  - Act fairly and with integrity in practice before the IRS.
- Implementing “best practices” can assist a practitioner in meeting their professional responsibilities regardless of the significant changes to tax practice.



# **Standards of Conduct: Remote Work**



# Non-Traditional Work Arrangements

- Before the pandemic, remote or hybrid tax professional positions existed within some firms, but they were not prevalent compared with today.
- Many of today's job seekers are pursuing remote or hybrid tax positions.
- Many firms continue to embrace a more flexible work environment, especially as they look to retain and attract talent.
  - Firms identified offering flexible working arrangements (e.g., hybrid hours) as a top tip for a successful recruitment strategy. See Thomson Reuters Institute 2023 State of the Tax Professionals Report.



# Circular 230 Provisions Applicable to Remote Work

- Several Circular 230 standards, as well as IRC statutes, can be triggered when a firm uses non-traditional work arrangements:
  - **10.36 Procedures to Ensure Compliance**
  - **10.34 Standards on Returns and Other Documents**
  - 10.22 Due diligence
  - 10.33 Best Practices
  - 10.35 Competence
  - 10.37 Written Advice
  - IRC §6713 and §7216(a) civil and criminal penalties for unauthorized use or disclosure of taxpayer information



## §10.36 — Procedures to Ensure Compliance (1 of 4)

- Under section 10.36, a firm with a Circular 230 practice must have in place “adequate procedures” to ensure compliance by its members, associates, employees, *and contractors* with Circular 230.
  - You cannot outsource your Circular 230 obligations.





## §10.36 — Procedures to Ensure Compliance (2 of 4)

- Generally, section 10.36 requires “reasonable steps” be taken to ensure a firm has in place procedures adequate to establish employees understand and follow their obligations under Circular 230 include:
  - Putting controls in place (including data security safeguards) to ensure oversight and review of employees and their work product;
  - Setting policies and procedures for the assignment of work and workload to ensure matters are handled by employees with the competence and time to do a thorough, complete job;
  - Taking prompt remedial action for failures to adhere to Circular; and
  - Supporting mentorship and continuing education (including ethics training) so employees gain the knowledge needed to be competent advisors and understand their obligations.



## §10.36 — Procedures to Ensure Compliance (3 of 4)

- A firm’s “adequate procedures” should be updated to address remote work by tax practitioners and support staff to include:
  - Safely secure client files, records, and workpapers in home office areas (e.g., away from and inaccessible to other family members, guests, baby/house sitters, house cleaners, etc.).
  - Establishing a system of securing and safely transferring client information.
  - Policy on shared workspaces to ensure confidentiality and avoid confusion over practitioner’s affiliation with other tax professionals in the same office.
  - Expectation of technological competence by tax practitioners, support staff, and contractors.



## §10.36 — Procedures to Ensure Compliance (4 of 4)

- A “responsible practitioner” at a firm is subject to discipline if, through willfulness, recklessness, or gross incompetence, they:
  - Fail to take reasonable steps to ensure adequate procedures for compliance with Circular 230 are in place and properly followed or
  - Individuals who are firm members, associates, or employees are or were engaged in a pattern or practice of failing to comply with Circular 230.
- Even if the responsible practitioner takes reasonable steps, they may be liable for violations if they:
  - Know or should know that one or more members, associates, or employees are or were engaged in a pattern or practice of not complying with Circular 230 and
  - Fail to take prompt action to correct the noncompliance.

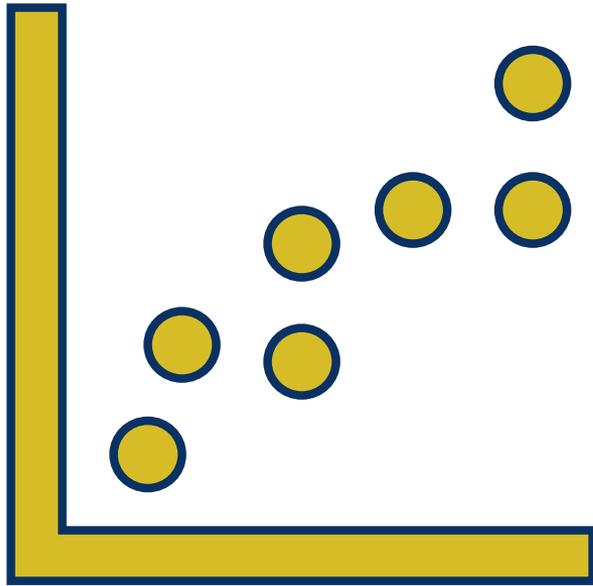


## §10.34 — Standards for Tax Returns/Documents

- Under section 10.34(a), a practitioner may not sign a tax return or advise a position on a tax return that willfully, recklessly, or through gross incompetence:
  - Lacks reasonable basis,
  - Has or is an unreasonable position (IRC §6694(a)(2)),
  - Is a willful attempt to understate liability (IRC §6694(b)(2)(A)), or
  - Sets forth a reckless, intentional disregard of rules and regulations (IRC §6694(b)(2)(B)).



# §10.34(a) and (b) — Standards for Tax Returns



- Under subparagraphs (a) and (b) of section 10.34, a practitioner —
  - May not advise taking frivolous positions.
  - May not advise submissions:
    - To delay or impede tax administration,
    - That are frivolous, or
    - Containing or omitting information that demonstrates an intentional disregard of rules or regulations.
- **Patterns matter!**



## §10.34 — Penalties and Client Reliance

- Under section 10.34, a practitioner must advise a client of potential penalty exposure regarding:
  - A position taken on the return if the practitioner advised the client regarding the position or the practitioner prepared or signed the return.
  - Any document, affidavit, or other paper submitted to the IRS.
- A practitioner must also advise the client of the opportunity for penalty avoidance through disclosure.
  - A disclosure can be made by attaching a Form 8275, *Disclosure Statement*, or Form 8275-R, *Regulation Disclosure Statement*, to the return.



## §10.82 — Expedited Suspension (1 of 2)

- Under section 10.82, the OPR can impose a suspension before *filing a complaint* if the practitioner has received an opportunity to be heard in another forum
  - Suspension or revocation of law license or CPA certificate for cause by the licensing authority (i.e., state bar or board of accountancy)
  - Criminal conviction
  - Violation of conditions imposed based on a prior OPR sanction
  - Certain court sanctions



## §10.82 — Expedited Suspension (2 of 2)

- Attorneys and CPAs should check their state licensing authorities regarding whether they can practice outside their state.
  - For example, ABA Model Rule 5.5 states:
    - a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.
    - b) A lawyer who is not admitted to practice in [a] jurisdiction shall not:
      - 1) except as authorized by these Rules or other law, *establish an office or other systematic and continuous presence* in this jurisdiction for the practice of law; or
      - 2) *hold out to the public or otherwise represent* that the lawyer is admitted to practice law in this jurisdiction.



# Best Practices for Remote Work Environments (1 of 2)

- Implement a structure that provides for appropriate supervision of remote workers—especially new employees—to ensure competency, due diligence, and commitment to meet standards.
- Document-management and sharing procedures to protect confidential taxpayer data, including policies on installing software updates, encrypting sensitive information, using electronic drop-boxes, safeguarding privileges, and limiting access to taxpayer data to individuals who need to know.
- Regular employee training programs on data security policies (e.g., proper handling of taxpayer PII (personally identifiable information)).



## Best Practices for Remote Work Environments (2 of 2)

- Foster a learning culture—including updates on current tax changes—that includes remote workers.
- Guidance on remote work locations regarding securing PII (e.g., locking room and file cabinets, putting files away at COB, awareness of “smart” technologies like Alexa, Siri, etc.).
- Awareness of jurisdictional licensing requirements for attorneys and CPAs.
- Effective communications with clients in remote environments.

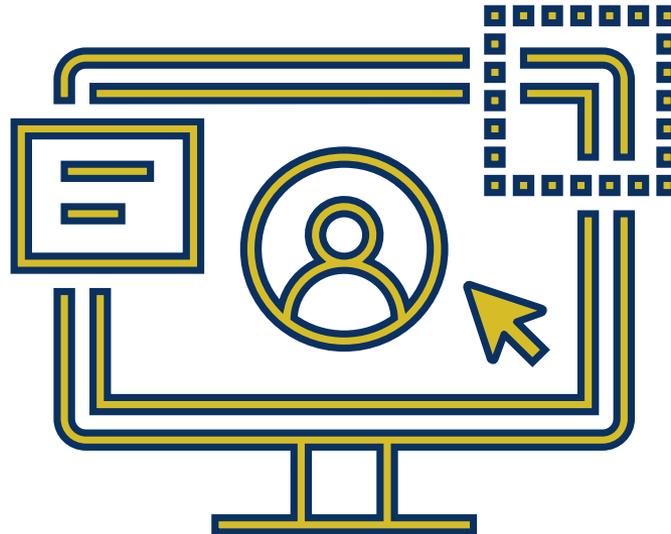


# **Standards of Conduct: Competency & Technology**



# Standards of Conduct: Competency & Technology

- Tax professionals and firms with remote work arrangements can meet their Circular 230 obligations when the right tools and technologies are in place.
  - The right tools and technologies will not suffice if the firm's employees are not competent in using those tools.





# Circular 230 Provisions Applicable to Competency & Technology

- Several Circular 230 standards, as well as IRC statutes, are applicable to a practitioner's competency, including competency as to technology:
  - **10.35 Competence**
  - 10.22 Due diligence
  - 10.33 Best Practices
  - 10.36 Procedures to Ensure Compliance
  - IRC §6713 and §7216(a) civil and criminal penalties for unauthorized use or disclosure of taxpayer information



## §10.35 — Competence (1 of 3)

- Practitioners must have the knowledge, skill, thoroughness, and preparation necessary for the matter for which they have been engaged.
  - Know when you are not competent.
- Practitioners can provide competent representation by researching and educating themselves on the issue or by consulting with other tax professionals who have established competence in the field in question.



## §10.35 — Competence (2 of 3)

- A practitioner's failure to meet standards of professional care may prejudice a client's rights by failing to:
  - Meet important filing deadlines imposed by applicable tax statutes;
  - Conduct necessary research on applicable authorities; or
  - Comply with a duty imposed by other ethical responsibilities.
- A practitioner unable to attain the necessary competence may have to decline (or withdraw) from representing the client.



## §10.35 — Technological Competence

- One facet of competence that has gained importance since the COVID-19 pandemic is the obligation of tax practitioners, support staff, and contractors to maintain sufficient technological competence.
  - See, e.g., Comment 8 to ABA Model Rule 1.1 (Competence).
- Technological competency is needed to ensure:
  - Deadlines can be met
  - Client confidences are maintained, and
  - The practitioner can otherwise competently represent their clients, communicate relevant information, and safeguard client property.
  - Properly established system of securing and safely transferring client information.



# Best Practices to Ensure Technological Competency (1 of 2)

- Assess risks in electronic systems (e.g., server locks, phishing/malware schemes, laptop and mobile security).
- Conduct computer network surveys to determine potential security issues (e.g., antivirus software, firewalls, security patches, scan engines).
- Install security software on all devices (e.g., computers, routers, tablets, phones) and set software to update and perform deep scans automatically
- Back-up sensitive data to a secure external source not connected full-time to a network
- Develop email policies that comply with federal and state laws (e.g., encryption).
- Wipe clean or destroy old computer hard drives, printers, copiers, etc.



# Best Practices to Ensure Technological Competency (2 of 2)

- Use strong passwords, different passwords for each account, password protect wireless devices, and consider a password manager program
- Use the IRS's Tax Pro Account to create and sign authorization forms (e.g., POA, TIA) and encourage clients to create IRS Online Accounts to access their account information.
- Create a written information security plan (WISP)
  - Publication 5708, *Creating a Written Information Security Plan for your Tax & Accounting Practice*, provides sample information to help tax professionals, particularly smaller practices, develop a WISP, as required by the Federal Trade Commission under the Gramm-Leach-Bliley Act ("Safeguards Rule").
  - OPR Alert Issue No. 2013-10, *Careful WISP(er) - Professional Responsibility and Data Security: Practitioners' Obligation to Have a Written Information Security Plan* (11/14/23)



# Best Practices to Ensure Competency as to Confidentiality

- Risks exist in the real world, too.
  - Don't collect more PII than is necessary for business
  - Restrict access to PII only to individuals who have a business need to access such information
  - Don't retain PII longer than necessary or legally required for business purposes and dispose of PII appropriately (e.g., on-site shredding)
- Routinely check IRS e-Services account for the number of returns filed with the practitioner's EFIN.
- Routinely check the CAF—through either the Tax Pro Account after linking your CAF or a CAF77 request—for the authorizations filed with the practitioner's CAF number.



# **Standards of Conduct: Artificial Intelligence**



# Standards of Conduct: Artificial Intelligence ( 1 of 2)

- Generative artificial intelligence (AI) has become a hot topic and much more accessible to the average individual with text and email generation, ChatGPT, etc.
- AI's future role as a tax practitioner's tool is still being developed.
  - In August 2023, the American Bar Association launched a year-long task force to study the impacts of AI on law practice.
- AI cannot be used as a substitute for a practitioner's competent representation.
  - Under section 330 of 31 USC and Circular 230, a practitioner competency (e.g., knowledge, skill, thoroughness, and preparation necessary for the matter for which they have been engaged) to advise and assist persons in presenting their cases before the IRS.



# Standards of Conduct: Artificial Intelligence (2 of 2)

- Due diligence is required in assessing the reliability of AI-created result
- While a practitioner can provide competent representation by researching and educating themselves on the issue, using AI for such education has risks. AI chatbots are prone to fabricating facts (called “hallucinations”).
  - A Colorado judge reported an attorney to the state bar for using ChatGPT to complete and file a document containing several fake case citations with the court.
  - A Manhattan judge imposed a \$5,000 fine on two lawyers who submitted a legal brief “full of made-up cases and citations,” all generated by ChatGPT.
  - A California judge penalized a law firm for submitting a legal brief citing “fake” cases. Per the firm, a young, newly hired lawyer used “online research” to write the motion.



# Circular 230 Provisions Applicable to Artificial Intelligence

- The ethical use of AI is addressed in many Circular 230 standards, as well as IRC statutes:
  - **10.22 Due diligence**
  - **10.37 Written Advice**
  - **10.51(a)(13) Giving a False Opinion, knowingly, recklessly, or through gross incompetence**
  - 10.33 Best Practices
  - 10.34 Standards on Returns and Other Documents
  - 10.35 Competence
  - 10.36 Procedures to Ensure Compliance
  - IRC §6713 and §7216(a) civil and criminal penalties for unauthorized use or disclosure of taxpayer information



## §10.22 — Due Diligence

- A practitioner must exercise due diligence in:
  - Preparing, approving, or filing tax returns, documents, affidavits, etc., relating to IRS matters.
  - Determining the correctness of oral/written representations made to the client or Treasury personnel.
- Willful blindness violates a practitioner's due diligence responsibilities under Circular 230.





# Meeting “Due Diligence”

- “Due diligence” is the exercise of care that a reasonable business or person is normally expected to act with to satisfy a legal requirement.
- Requires a practitioner to ask questions of their clients and third parties and not “turn a blind eye” to what a reasonable person would see or ask about. Reasonable actions include:
  - Authenticating a new client’s identity.
  - Crafting engagement letters that describe the scope of services to be provided and the mutual responsibilities of the client and the practitioner.
  - Obtaining sufficient information on the matter for which the practitioner has been engaged (e.g., prior years’ returns, client’s books and records, tailored tax organizers, and substantiation procedures).



## §10.22 — Due Diligence: Reliance on Client

- Relying on information furnished by clients
  - *Generally*, a practitioner may rely in good faith without verification upon information furnished by the client.
    - A practitioner cannot ignore the implications of information furnished to or known by the practitioner, and
    - The practitioner must make reasonable inquiries if the information furnished appears incorrect, incomplete, or inconsistent with other facts or assumptions.
  - Cannot be willfully blind!



## §10.22 — Due Diligence: Reliance on Third Party

- Relying on another's work product
  - A practitioner may rely on other professionals' work product with reasonable care.
    - May not ignore other information furnished to you or known by you.
    - Duty to make reasonable inquiries if the information furnished appears incorrect, incomplete, or inconsistent with other facts or assumptions.
    - Application of this standard to AI-generated work products.



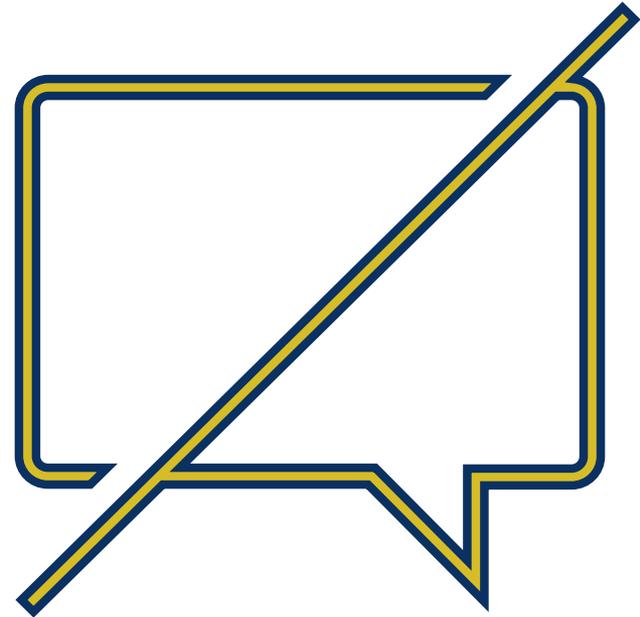
## §10.37 — Written Advice

- Section 10.37 elaborates on a practitioner's due diligence obligation when providing written advice, requiring the practitioner to:
  - Identify and ascertain the material facts and reasonably consider material facts and circumstances;
  - Not *unreasonably* rely on representations, statements, findings, or agreements;
  - Relate applicable law to the material facts;
  - Make reasonable factual and legal assumptions; and
  - Not consider the likelihood of an audit in making your determinations.



## § 10.51(a)(13) — Giving a False Opinion

- A practitioner may not give a false opinion knowingly, recklessly, or through gross incompetence, including an opinion that is intentionally or recklessly misleading or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws.





# Best Practices if Utilizing AI

- While AI is a helpful, even powerful, tool, it cannot substitute the practitioner's knowledge, analysis, or conclusions. Practitioners need to recognize that AI is not without shortcomings and risks:
  - Using open model AI like ChatGPT exposes a client's PII or other confidential information.
  - Lack of transparency on where the information is coming from in an AI response. (Note: ChatGPT's Internet "scan" is only current through 2021).
  - Practitioners can't just accept the responses from AI tools—practitioners must validate the results with actual court cases, citations, tax law, etc.
  - Concern that AI models can generate biased results based on the data being fed to them.



# **Standards of Conduct: Social Media**



# Standards of Conduct: Social Media (1 of 2)

- Tax professionals must be aware of the potential legal and compliance risks associated with their online presence and exercise caution when using social media.
  - Sharing tax advice or opinions on social media without the appropriate qualifications or compliance can lead to legal issues. Endorsing certain products or services without disclosing conflicts of interest can result in ethical violations.
  - Tax professionals deal with sensitive financial and personal information. Sharing any of this data on social media can pose a significant risk. Even seemingly harmless posts or comments can inadvertently reveal information that could breach confidentiality, be exploited by cybercriminals, be used in identity theft, or embarrass clients.



# Standards of Conduct: Social Media (2 of 2)

- Social media blurs the lines between personal and professional life. Tax professionals must be cautious about what they post, as inappropriate or unprofessional content can damage their reputation and potentially lead to disciplinary actions from professional organizations or regulatory bodies.
- Cybercriminals often use social media to gather information about individuals, making them vulnerable to phishing and social engineering attacks. Tax professionals may be targeted with fake messages or profiles designed to deceive them into revealing sensitive information or clicking on malicious links.



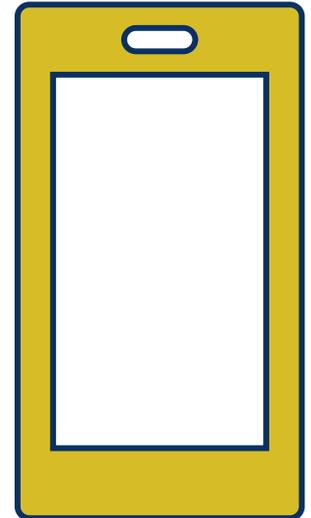
# Circular 230 Provisions Applicable to Social Media

- The ethical use of social media is covered in several Circular 230 standards, as well as the Code:
  - **10.30 Solicitation**
  - **10.29 Conflicting Interests**
  - **10.51(a)(15) Disreputable Conduct (willfully disclosing or using tax return information)**
  - **IRC §6713 and §7216(a) civil and criminal penalties for unauthorized use or disclosure of taxpayer information**
  - 10.33 Best Practices
  - 10.22 Due diligence
  - 10.34 Standards on Returns and Other Documents
  - 10.35 Competence
  - 10.36 Procedures to Ensure Compliance
  - 10.37 Written Advice



## §10.30 — Solicitation

- Practitioners are prohibited from making a false, fraudulent, or deceptive statement or claim.
- Inclusion of client testimonials or information in advertising (or social media posts) could breach the duty of confidentiality.
- Practitioners may publish a fee schedule and disseminate this fee information to the public.
  - Any statement of fee information must disclose whether the client will be responsible for phone charges, copy charges, filing fees, etc.
  - Practitioners can charge no more than the published rates for at least 30 days after the last publication of the fee schedule.





## §10.29 — Conflicting Interests (1 of 3)

- Conflicts can often occur when representing related taxpayers, for example married taxpayers, a partnership and the partners, or a corporation and its shareholders or officers.
- Conflicts can also arise when there is a significant risk that the practitioner's representation of one client will be materially limited by:
  - Their representation of another client or former client,
  - Their responsibilities to a third party -- such as a fiduciary, beneficiary, or someone whom they owe a contractual or other obligation, or
  - Their own personal interests.



## §10.29 — Conflicting Interests (2 of 3)

- For example, a conflict of interest can arise when a practitioner promotes or endorses certain products, transactions, or services without disclosing conflicts of interest.
  - The practitioner's interests may be adverse to the client's interests:
    - Client cannot make an informed decision if they are unaware of the practitioner's own interest;
    - The practitioner could be more interested in selling the product, transaction, or service than in their professional obligations to their client or
    - Should a controversy arise with a taxing authority regarding the tax matter, the practitioner may continue to dispute the matter to avoid a penalty or malpractice lawsuit.



## §10.29 — Conflicting Interests (3 of 3)

- May represent if:
  - You have a reasonable belief in your ability to provide competent, diligent representation to each affected client;
  - Not legally prohibited; and
  - Each affected client waives conflict by giving informed consent in writing at the time the conflict is known (i.e., within 30 days).
    - Must retain consents for 36 months after representation ceases and make them available to the IRS upon request.



## §10.51(a)(15) — Willfully Disclosing or Using Tax Return Information

- Section 10.51(a)(15) prohibits the willful disclosure or use of a tax return or tax return information in a manner not authorized by the Code or contrary to an order from a court or administrative law judge in an OPR proceeding.
- Although not enforced by OPR, the Code imposes civil (IRC §6713) and criminal (IRC §7216(a)) penalties for unauthorized use or disclosure of taxpayer information.



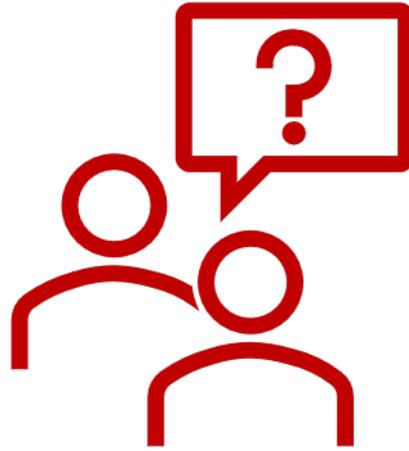
# Best Practices with Social Media (1 of 2)

- Tax professionals can implement several best practices to avoid the risks associated with using social media:
  - Separate personal and professional social media profiles, maintain strict privacy settings and regularly review and update privacy settings.
  - As part of its procedures to ensure compliance, firms should develop and implement clear social media policies and educate all employees on these policies, the potential risks associated with social media, and the importance of discretion.
  - Avoid sharing personal financial information, client details, or sensitive tax-related information on social media. Be mindful of what you post or comment, as seemingly innocuous information can be used against you or your clients.

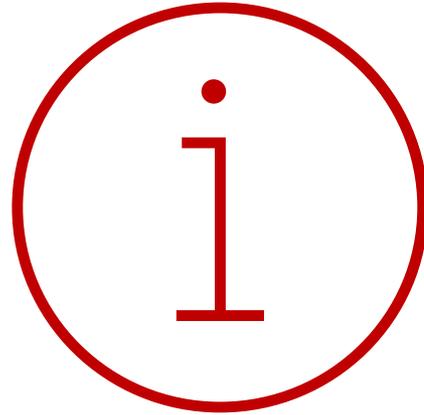


## Best Practices with Social Media (2 of 2)

- Before accepting connections or engaging with individuals or organizations on social media, verify their authenticity and be selective about accepting friend or connection requests.
- Avoid offering specific tax advice or endorsing products or services without the appropriate qualifications and disclosures. Ensure that your online activities adhere to the ethical and legal standards established by your professional organizations and regulatory authorities.
- Regularly monitor your online presence by setting up Google Alerts or using social media monitoring tools to track mentions of your name, firm, or relevant keywords. This can help you stay informed and promptly address any potential issues.



# QUESTIONS



# Contact Information and Resources



# Contact and Referrals to OPR

- **Office of Professional Responsibility**
  - 1111 Constitution Ave., NW, SE: OPR Rm. 7238, Washington, DC 20224
  - Efax: (855) 814-1722
  - Visit <http://www.irs.gov/> and search "Circular 230 Tax Professionals"
- **Referrals**
  - To make a referral regarding a return preparer, file Form 14157. It will go to the RPO, and if the preparer is under OPR's jurisdiction or has representational activities, the information will be routed to OPR.
  - For practitioners covered under Circular 230, send Form 8484 via fax to OPR's eFax.



# Resources and Guidance

- Publications
  - Treasury Department Circular No. 230 (Rev. 6-2014)
  - IRS Pub. 947, *Practice Before the IRS and Power of Attorney*
  - IRS Pub. 4557, *Safeguarding Taxpayer Data: A Guide for Your Business*
  - IRS Pub. 5708, *Creating a Written Information Security Plan for your Tax & Accounting Practice*
  - IRS Pub. 5709, *How to Create a Written Information Security Plan for Data Safety*
  - IRS Form 2848, *Power of Attorney and Declaration of Representative*
  - IRS Form 8275, *Disclosure Statement*
  - IRS Form 8867, *Paid Preparer's Due Diligence Checklist*



# Resources and Guidance

- Internet
  - OPR Website
  - News & Updates from the Office of Professional Responsibility
  - Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases
  - Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service



# Recursos y Guías en Español

- Formulario 2848, *Poder Legal y Declaración del Representante* y Instrucciones para el Formulario 2848(SP)
- Formulario 8821, *Autorización para recibir Información Tributaria* y Instrucciones para el Formulario 8821
- Pub. 947, *Como Ejercer ante el Servicio de Impuestos Internos (IRS) y el Poder Legal*
- Circular 230 del Departamento del Tesoro (Rev. 6-2014), *Reglamentos que rigen el ejercicio ante el Servicio de Impuestos Internos*