

Tax Ethics: Best Practices for Ensuring Compliance With Circular 230 and Other Applicable Rules

TUESDAY, NOVEMBER 22, 2022, 1:00-2:50 pm Eastern

IMPORTANT INFORMATION FOR THE LIVE PROGRAM

This program is approved for 2 CPE credit hours. To earn credit you must:

- **Participate in the program on your own computer connection (no sharing)** - if you need to register additional people, please call customer service at 1-800-926-7926 ext. 1 (or 404-881-1141 ext. 1). Strafford accepts American Express, Visa, MasterCard, Discover.
- Listen on-line via your computer speakers.
- Respond to five prompts during the program plus a single verification code.
- To earn full credit, you must remain connected for the entire program.

WHO TO CONTACT DURING THE LIVE PROGRAM

For Additional Registrations:

-Call Strafford Customer Service 1-800-926-7926 x1 (or 404-881-1141 x1)

For Assistance During the Live Program:

-On the web, use the Chat function to send a message

If you get disconnected during the program, you can simply log in using your original instructions and PIN.

Tips for Optimal Quality

FOR LIVE PROGRAM ONLY

Sound Quality

When listening via your computer speakers, please note that the quality of your sound will vary depending on the speed and quality of your internet connection.

If the sound quality is not satisfactory, please e-mail sound@straffordpub.com immediately so we can address the problem.

Recording our programs is not permitted. However, today's participants can order a recorded version of this event at a special attendee price. Please call Customer Service at 800-926-7926 ext.1 or visit Strafford's website at www.straffordpub.com.

Tax Ethics: Best Practices for Ensuring Compliance With Circular 230 and Other Applicable Rules

November 22, 2022

Bryan C. Skarlatos, Partner
Kostelanetz & Fink LLP
bskarlatos@kflaw.com

Notice

ANY TAX ADVICE IN THIS COMMUNICATION IS NOT INTENDED OR WRITTEN BY THE SPEAKERS' FIRMS TO BE USED, AND CANNOT BE USED, BY A CLIENT OR ANY OTHER PERSON OR ENTITY FOR THE PURPOSE OF (i) AVOIDING PENALTIES THAT MAY BE IMPOSED ON ANY TAXPAYER OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY MATTERS ADDRESSED HEREIN.

You (and your employees, representatives, or agents) may disclose to any and all persons, without limitation, the tax treatment or tax structure, or both, of any transaction described in the associated materials we provide to you, including, but not limited to, any tax opinions, memoranda, or other tax analyses contained in those materials.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

TAX ETHICS: BEST PRACTICES FOR ENSURING COMPLIANCE WITH CIRCULAR 230 AND OTHER APPLICABLE RULES

Strafford Webinar

BRYAN C. SKARLATOS, ESQ.

KOSTELANETZ LLP

NEW YORK, NY

BSKARLATOS@KFLAW.COM

212-808-8100

What Are We Talking About? Morals v. Ethics



Definitions & General Comments

Ethics in Everyday Life

- Is it better to have a few general principles or many specific rules?
- If something is not expressly prohibited, is it allowed? Why do some rules have to be written down, but others don't?

Shampoo from Hotel Room versus the Bathrobe.*

- Why is there a sign on the robe saying, “If you take this, we'll charge you,” but not one on the hair dryer?
- Does it matter what the sign on the robe says? (“If you like this bathrobe, they are for sale in the hotel lobby”)

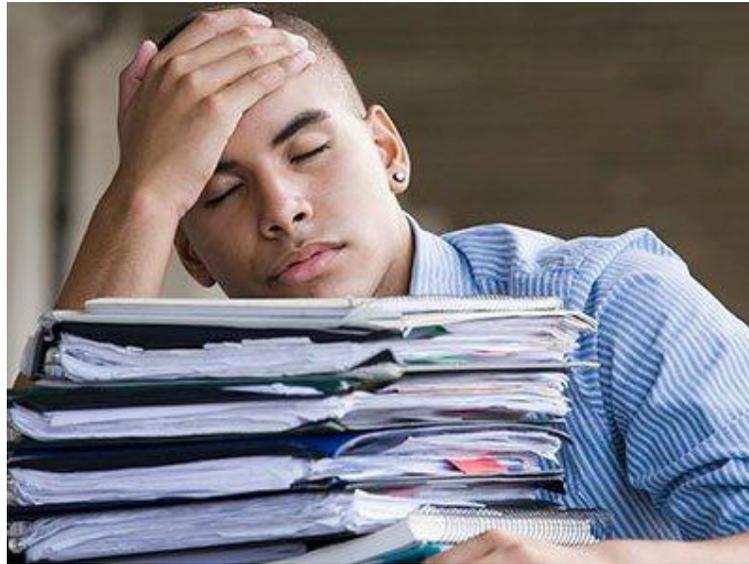
*According to hotel.com, 35 percent of global travelers flinch hotel amenities (towels, linens, magazine, books, even furnishings); toiletries excepted from survey because "everyone takes those." *But see* Chuck Klosterman, *Rinse & Repeat (The Ethicist)*, New York Times, at MM20 (Magazine) (Oct. 14, 2012).

How Does This Apply to Taxes?



Who has heard of voluntary compliance?

The U.S. Tax System Is Based on "Self-Assessment"



That is what tax returns are all about.

IRS Taxpayer Attitude Survey (December 2014)

Results

- 86% of those surveyed said that it was not at all acceptable to cheat on your income taxes
- 6% said it was OK to cheat a little here and there
- **5% said it was OK to cheat as much as possible**

Factors that exert a "great deal of influence" as to whether taxpayers honestly report and pay their taxes:

- Personal Integrity – 80%
- Third Party Reporting of Tax Information (1099s, K-1s, etc.) – 36%
- Fear of an Audit – 36%
- Belief that Neighbors Pay and Report Honestly – 20%

Tax Planning Is Legitimate

- "Over and over again, courts have said that there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich or poor, and all do right, for ***nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant.***" *Commissioner v. Newman*, 159 F2d 848, 850-51 (2nd Cir. 1947) (Learned Hand dissenting)
- Avoidance of taxes is not a criminal offense. Any attempt to reduce, avoid, or alleviate taxes by legitimate means is permissible. Internal Revenue Manual 9.1.3.3.2.1

Ethical and Penalty Standards for Practitioners

Virtually all difficult ethical problems arise from conflicts between a practitioner's responsibilities:

- to clients;
- to the tax system; and
- to the practitioner's own interest in remaining an ethical person while earning a satisfactory living.



But Where Is the Line?



Where is the line between legitimate tax planning, unethical conduct and criminal tax evasion?

The Line Is Not Always Clear



How Do You Know Where To Go?

Sources of Ethical Standards in Tax Practice

For Practitioners

- AICPA Statements on Standards for Tax Services
- National Association of Enrolled Agents Code of Ethics and Rules of Professional Conduct
- Tax Executive Institute Standards of Conduct
- Circular 230
- ABA Model Rules of Professional Conduct
- ABA Ethical Opinions
- Civil Penalty Standards
- Criminal Penalty Standards

For Taxpayers

- Civil Penalty Standards
- Criminal Penalty Standards

AICPA Statements on Standards for Tax Services

SSTS No. 1 – Tax Return Positions

SSTS No. 2 – Answers to Questions on Returns

SSTS No. 3 – Certain Procedural Aspects

SSTS No. 4 – Use of Estimates

SSTS No. 5 – Departure from a Position Previously Concluded

SSTS No. 6 – Knowledge of Error

SSTS No. 7 – Form and Content of Advice to Taxpayers

NAEA Code of Ethics and Rules of Professional Conduct

Code 2. Honesty, integrity and objectivity

Code 3. Competence

Code 4. Confidentiality

Code 6. Comply with Cir. 230

Code 7. No knowing misrepresentations or omissions and duty to withdraw

Rule 3. Promptly respond to IRS requests

Rule 5. Conflicts of interest

Rule 8. Tax return positions

Rules 17-19. Withdraw and termination

TEI Standards of Conduct

- The member accepts taxes as a cost of civilization and accepts the laws imposing taxes...The member will comply with those laws, whether or not agreeing with them.
- ***The member recognizes an obligation to minimize company tax liability, within the bounds of the law and to the extent consistent with policies or objectives of the company.***
- The member accepts each government representative as a responsible person who is a professional required to fulfill the obligation to collect tax in accordance with the law. The member will deal with the representative on that basis...
- The member will present the facts pertinent to the resolution of questions at issue to representatives of the government imposing the tax.

Circular 230

"Treasury Department Circular 230," Title 31 Code of Federal Regulations, Subtitle A, Part 10

Governs Standards of "Practice Before the IRS"

- Authority to practice before the IRS
- Duties and restrictions relating to practice before the IRS
- Sanctions for violating Circular 230
- Rules applicable to disciplinary hearings for Circular 230 violations

Circular 230 administered by IRS Office of Professional Responsibility (OPR) and Return Preparer Office (RPO)

The Horse Act of 1884

- Original statutory basis for Circular 230
 - Allowed Treasury to discipline agents who fraudulently claimed reimbursement for veterans whose horses were lost or killed in the Civil War
- Currently, authorizes the IRS to "regulate the practice of representatives of persons before the Department of the Treasury."
31 U.S.C. § 330(a)(1)



Key Provisions of Circular 230

10.2 Definitions

10.20 Information to be furnished

10.21 Knowledge of a client's omission

10.22 Diligence as to accuracy

10.29 Conflicting interests

10.34 Standards with respect to tax returns and other documents

10.36 Procedures to ensure compliance

10.35 Competence

10.37 Requirements for written advice

10.51 Incompetence and disreputable conduct

ABA Model Rules of Professional Conduct

1.1 Competence

1.3 Diligence

1.4 Communication

1.6 Confidentiality of Information

1.7 Conflicts of Interest

1.9 Duties to Former Clients

1.16 Declining or Terminating Representation

1.18 Duties to Prospective Clients

3.3 Candor to the Tribunal

3.7 Lawyer as Witness

4.1 Truthfulness in Statements to Others

ABA Ethics Opinions

ABA Opinion 314

- The IRS is not a tribunal, so there is no duty to bring adverse authority to the IRS's attention
- However, there is a duty not to mislead the IRS
- A lawyer may freely urge a tax return position most favorable to the client as long as there is a **reasonable basis** for the position

ABA Opinion 85-352

- Reasonable basis is not sufficient
- A lawyer may advise a client to take a position on a tax return if there is a **realistic possibility of success** if the matter is litigated
 - One in three chance of success
 - Do not have to believe that the position is likely to prevail

These standards have been legislatively changed in IRC 6694

Civil Penalties Applicable to Tax Advisors

IRC 6694 – Understatement of taxpayer's liability by tax return preparer

IRC 6695 – Other penalties for return preparers

IRC 6695A – Penalties for incorrect appraisals

IRC 6700 – Promoting abusive tax shelters, etc.

IRC 6701 – Penalty for aiding and abetting understatement of tax liability

IRC 6707/6708 – Failure to report or maintain list of reportable transactions

IRC 6713 – Disclosure or use of information by preparers of returns

Criminal Penalties Applicable to Tax Advisors

IRC 7201 – Tax Evasion

IRC 7206(1) – Filing a False Return

IRC 7206(2) – Aiding or Assisting the Filing of a False return

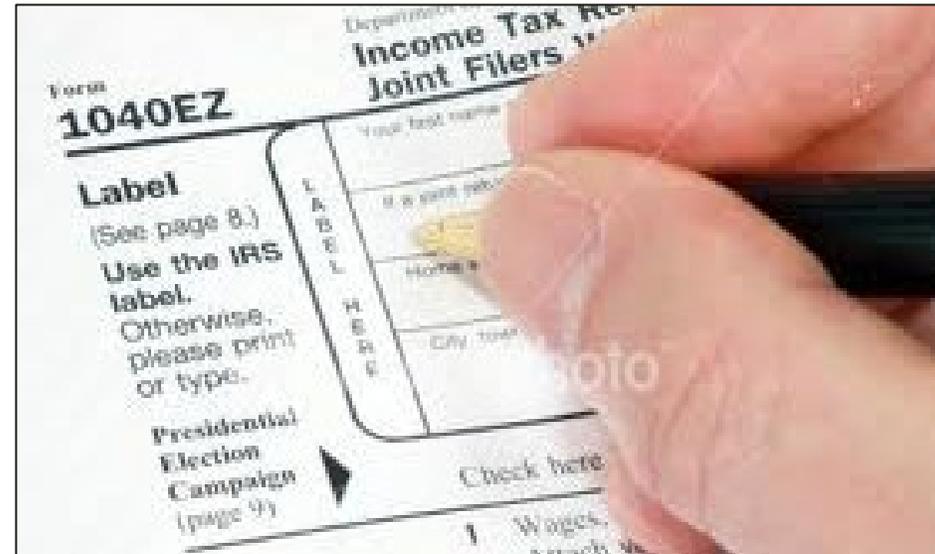
IRC 7212 – Any Attempt to Interfere with the Administration of the Internal Revenue Laws

IRC 7216 – Disclosure or Use of Information by Preparers of Returns

18 USC 371 – Conspiracy

18 USC 1001 – False Statement to a Federal Official

Not Just Tax Shelters



But Ordinary, Everyday Advice as Well

Hypothetical – The Case of “Your Best Client”

Your best client, Clem, and his sister, Sue, call you on September 10th with his accountant, Andy, on the phone and say:

Last year, one of our family partnerships donated a conservation easement on some farmland we own to a conservation trust. Andy is telling me that that this is a tax shelter and that we shouldn't take a deduction for the charitable contribution. The guy from the conservation trust told us this was standard stuff.

Can you tell Andy it is OK? What do you do?

Standards to Consider

Preliminary considerations:

- What rules apply if you are just talking on the phone? Are you a “practitioner”?
- Competence
- Due Diligence

How sure do you have to be?

- Standards for giving advice

Difference between "Planner," "Preparer," and "Representative"

- A "Planner" renders advice about structuring a transaction ***before the transaction has occurred.***
- A "Preparer" renders advice about reporting a transaction on a tax return ***after the transaction has occurred.***
- A "Representative" renders advice ***during an audit or investigation.***

Definition of “Practice” for Purposes of Cir. 230

- 31 U.S.C. 330 – Authorizes the Treasury to regulate the ***practice of representatives*** of persons before the Department of Treasury
- Cir. 230 10.2(4) – ***Practice*** includes all matters connected with a presentation to the IRS relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS
 - Includes preparing or filing documents, corresponding and communicating with the IRS, rendering written advice, and representing a client at conferences, hearings, and meetings
- Application of Circular 230 is up in the air after *Loving* and *Ridgely*

Definition of “Tax Return Preparer” for Purposes of IRC 6694

IRC 7701(a)(36) and Treas. Reg. 301.7701-15(b)(2):

- The term "tax return preparer" means any person who prepares *for compensation*, or employs one or more people to prepare for compensation, any return of tax
- The regulations provide that someone who just gives written or oral advice on a tax issue can be a preparer if:
 - The advice pertains to a "*substantial portion*" of a return;
 - The advice is given *with respect to events which have occurred* at the time the advice is rendered;
 - The advice is directly relevant to a determination of the existence, characterization or amount of an entry on a return; and
 - Unless the time spent on the advice given after the events have occurred is less than 5 percent of the total time incurred by the person with respect to the position.

Cir. 230, 10.35 – Competence

- A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service
 - Competent practice requires the knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged

Did You Know This Could Be A Listed Transaction?

- Notice 2017-10 – Syndicated Conservation Easement Transactions
 - Includes "Substantially Similar" Transactions
- Taxpayer duty to report
- Material Advisor duty to report and keep information/lists

Cir. 230, 10.22 – Diligence as to Accuracy

(a) *In general.* A practitioner must exercise ***due diligence*** –

(1) In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters;

(2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and

(3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

Relying on Information from Clients and Other Advisors

- Treas. Reg. 1.6694-1(e):
 - In general, a preparer **may rely in good faith without verification** upon information furnished by the taxpayer and other advisors.
 - **Not required to audit or verify** information.
 - However, **cannot ignore the implications** of information furnished to the tax return preparer or actually known by the tax return preparer.
 - **Must make reasonable inquiries** if the information as furnished appears to be incorrect or incomplete.
- Cir. 230, sec. 10.34(d) and SSTS No. 3 have essentially the same standards.

Standards for Advising or Recommending a Return Position

Circular 230, Sec. 10.34(a) – May not sign a tax return or advise a position on a tax return, willfully, recklessly, or through gross incompetence if the position is an ***unreasonable position (6694(a)(2))***, a willful attempt to understate liability, or a reckless or intentional disregard of rules and regulations.

SSTS No. 1 – In recommending a return position, a CPA must comply with the ***standards of the applicable taxing authority (e.g., IRC 6694)***.

IRC 6694 – Return Preparer Penalty

- Return preparers can be subject to penalties for understatements arising from an **unreasonable position**
- A position is unreasonable unless:
 - it is supported by **substantial authority**; or
 - has a **reasonable basis and is disclosed**
- Tax shelter or reportable transaction is unreasonable unless:
 - it is supported by **reasonable belief that it is more likely than not correct**; or
 - **is disclosed** as provided in IRS Notice 2008-13

Hierarchy of Standards

- Will
- Should
- More likely than not – 51%
- Substantial authority
- Realistic possibility of success on the merits
- Reasonable basis
- Not frivolous

What Is “Substantial Authority”?

There is substantial authority only if the weight of authority supporting the tax treatment is ***substantial*** in relation to the weight of authority supporting a contrary treatment. Treas. Reg. 1.6662-4(d)

The standard is lower than the ‘more likely than not’ standard but higher than the reasonable basis standard.

- A return position that is arguable but fairly unlikely to prevail in court satisfies the reasonable basis standard but not the substantial authority standard.

These are objective standards involving application of the law to the relevant facts.

Substantial Authority (cont.)

Only the authorities listed in Treas. Reg. 1.6662-4(d)(3)(iii) may be considered

- Includes things such as the Internal Revenue Code, temporary and final regulations, revenue rulings and procedures, treaties, cases, congressional intent as reflected in congressional history, private letter rulings, technical advice memos, action on decisions and general counsel memos, IRS notices, announcement and press releases
- IRS FAQs, conclusions reached in treatises, legal periodicals, and legal opinions rendered by tax professionals are not authority, but the authorities underlying such expressions of opinion may give rise to substantial authority

No mention of "facts," but

- Osteen v. Commissioner, 62 F.3d 356 (11th Cir. 1995) (factual evidence that is sufficient to avoid a reversal under the clearly erroneous standard is sufficient to constitute substantial authority).
- Kleuner v. Commissioner, 154 F.3d 140 (6th Cir. 1998) (a "considerable" or "ample" amount of factual evidence can constitute substantial authority).

What Is "Reasonable Basis"?

Reasonable Basis is defined in Treas. Reg. 1.6662-3(b)(3)

- Reasonable basis is a relatively high standard of tax reporting that is ***significantly higher than 'not frivolous'*** or not patently improper.
- The reasonable basis standard is ***not satisfied by a return position that is merely arguable*** or that is merely a colorable claim.
- If a return position is ***reasonably based on one or more of the authorities*** used for the substantial authority standard, then the position has a reasonable basis.

Adequate Disclosure

Adequate Disclosure is defined in Treas. Reg. 1.6662-4(f) and Cir. 230, sec. 10.34(c).

- Form 8275 or 8275-R
- Special rules via Rev. Proc.
- Schedule UTP

Special Rules for Tax Return Preparers in Treas. Reg. 1.6694-2(d)(3)(ii) and IRS Notice 2008-13

- For non-signing preparers, adequate disclosure can be a speech to the taxpayer, documented in writing, about penalty standards and ability to avoid penalties through disclosure

Audit Lottery Has No Place in Tax Advice

Written Advice:

The Practitioner must 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."

Circular 230, § 10.37(a)(2)(vi)

Oral Advice:

"Treasury and the IRS agree that audit risk should not be considered by practitioners in the course of advising a client on a Federal tax matter, regardless of the form in which the advice is given."

Regulations Governing Practice Before the Internal Revenue Service, 79 FR 33685-01 (Preamble to Circular 230)

Audit Lottery Has No Place in Tax Advice (cont.)

SSTS No. 1(7)

A member should not recommend a tax return position or prepare or sign a tax return reflecting a position that the member knows:

- Exploits the audit selection process of a taxing authority; or
- Serves as a mere arguing position advanced solely to obtain leverage in a negotiation with a taxing authority.

Cir. 230, 10.36(b) – Procedures to Ensure Compliance

- Any practitioner who has (or practitioners who have or share) principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds, 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 with Circular 230.
- Any practitioner who has (or practitioners who have or share) this principal authority will be subject to discipline for failing to comply with the requirements of this paragraph if– (see subparts in regs).

Cir. 230, 10.29 – Conflicting Interests

A conflict of interest exists if:

- One client's interest is directly adverse to another
- Significant risk of material limitation of responsibilities to
 - another client or former client,
 - third person, OR
 - personal interests of the practitioner

May represent if:

- Reasonable belief in 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 conflict is known

Model Rule of Professional Conduct 1.7 – Conflict of Interest: Current Clients - Comments

- Conflict of interest rules are based on duties of loyalty, independent judgment, and confidentiality
- Must consider the "likelihood that a difference of interests will eventuate" and "whether it will materially interfere with the lawyer's independent judgment"
 - Even consider who is paying fees
- Consentability is determined by considering whether the client's interest will be adequately protected by informed consent
- Informed consent requires that the affected client be aware of the relevant circumstances and the material and reasonably foreseeable ways that a conflict could affect each client
 - Must consider possible effects on loyalty, confidentiality, and attorney-client privilege
 - Cost of separate counsel can be considered
- Similar duties for former and prospective clients under MRPC 1.9 and 1.18

What If You Come In After a Bad Return Has Been Filed?

Taxpayer

- Treas. Reg. 1.451-1(a) and Treas. Reg. 1.461-1(a) – Taxpayers "should" file amended returns
- *Badaracco Sr. v. Commissioner*, 464 U.S. 386 (1984) – No duty in the Code or regulations to file an amended return

Practitioner

- SSTS No. 6 – Upon becoming aware of an error in a return, or failure to file a return, a CPA should inform the taxpayer of such error, the potential consequences, and recommend that corrective action be taken
- Cir. 230, Sec. 10.21 – Knowledge of client's omissions: a practitioner who becomes aware of non-compliance or an error or omission, must advise the client of the non-compliance, error or omission and must advise the client of the consequences
- Cir. 230, Sec. 10.22 – Diligence as to accuracy
- Cir. 230, Sec. 10.35 – Competence

Civil Penalties vs. Criminal Penalties

Avoidance of taxes is not a criminal offense.

- Any attempt to reduce, avoid, or alleviate taxes by legitimate means is permissible.
- The distinction between avoidance and evasion is fine, yet definite. One who avoids tax does not conceal or misrepresent. He/she shapes events to reduce or eliminate tax liability and, upon the happening of the events, makes a complete disclosure.
- Evasion on the other hand, involves deceit, subterfuge, camouflage, concealment, some attempt to color or obscure events, or makes things seem other than they are.

Avoidance Distinguished from Evasion, IRM 9.1.3.3.2.1

Criminal Penalties Applicable to Taxpayers and Tax Practitioners

IRC 7201 – Tax Evasion

IRC 7206(1) – Filing a False Return

IRC 7206(2) – Aiding or Assisting the Filing of a False return

IRC 7212 – Any Attempt to Interfere with the Administration of the Internal Revenue laws

IRC 7216 – Disclosure or Use of Information by Preparers of Returns

18 USC 371 – Conspiracy

18 USC 1001 – False Statement to a Federal Official

Willfulness Is the Key to Fraud

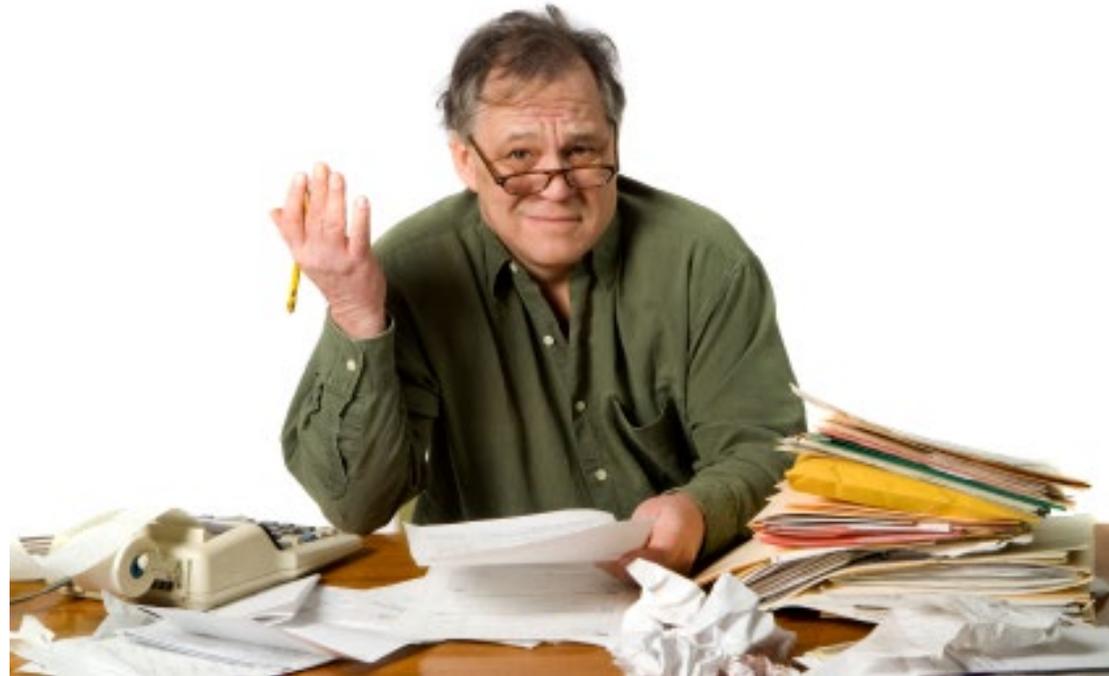
The 75% civil fraud penalty requires willfulness

All criminal tax statutes require some form of willfulness

Differences between civil fraud and criminal fraud:

- Consequences – Money vs. incarceration
- Burden of proof – Clear and convincing vs. beyond a reasonable doubt
- Statutes of limitations – Unlimited vs. six years

But the Tax Law Is So Confusing that Ignorance Can Be a Defense



Willfulness Is Subjective

For purposes of criminal penalties, willfulness is defined as the "intentional violation of a known legal duty."

- *E.g., United State v. Pomponio*, 429 U.S. 10, 12 (1976).

The test for willfulness is subjective, rather than objective, and a defendant who honestly believed that his or her conduct was lawful is not guilty, no matter how unreasonable the belief may be.

- *E.g., Cheek v. United States*, 498 U.S. 192 (1991).

How Can the IRS Prove a Subjective State of Mind?



Circumstantial Evidence: Like Tracks in the Snow



Circumstantial Evidence of Willfulness

A/K/A "Badges of Fraud"

- Repeated failure to report income or pay tax

Serial "Mistakes"

- Attempts to confuse, conceal, or "overly advocate"
- False invoices or other documents
- Destruction of records
- Failure to produce damaging documents or information
- Overly complex structures or arrangements with no legitimate business purpose
- Off-book bank accounts
- Use of pseudonyms or fake names
- Lying or excessive delaying during an audit

Admissions

- Double set of books
- Incriminating e-mails, notes, or statements to witnesses

Circumstantial Evidence of Willfulness in Foreign Asset Cases

A/K/A "Badges of Fraud"

- Use of a bank secrecy jurisdiction
- Motivation was to hide from spouse or partner
- Failure to pay tax on the corpus
- Failure to pay tax on the income
- Numbered account or pseudonym
- Entities or structures
- Hold mail
- Move the account
- Use of cash or debit card
- Use of other non-reportable assets
- Failure to tell accountant or other advisor
- Failure to check the box

Willful Blindness



How Do Courts Apply Willful Blindness?

Deliberate ignorance and positive knowledge are equally culpable if the person is aware of the "*high probability of the existence of the fact in question.*"

United States v. Stadtmayer, 620 F.3d 238 (3d Cir. 2010) – Although the defendant spent very little time reviewing the tax returns prepared by the accountants, there was sufficient evidence to justify the willful blindness charge because the defendant was intimately involved with the operations of the partnerships and was aware of how the partnerships characterized capital expenditures, charitable contributions, gift and entertainment expenses, and "non-property" expenses in the general ledger and financial statements.

United States v. Williams, 489 Fed. Appx. 655 (4th Cir. 2012) – Taxpayer checked "no" on his tax return as to whether he had an interest in a foreign bank account even though he did have such an interest. Williams argued that he never looked at the language of the return and made sure the accountant's numbers on the tax return were correct. The court held that a person who signs a tax return has constructive knowledge of its contents and Williams's signature was *prima facie* evidence that he knew the contents of the return.

Scope of Potential Criminal Liability for Professionals?



Who Can Be Included in a Potential Conspiracy?

- Participating in a phone call or sending an e-mail that is in furtherance of a plan to impair or impede the IRS?
- Providing comments on an opinion letter that later turns out to contain false representations?
- Distributing documents during a meeting with a client and then taking them back so that the IRS won't get the documents if it issues a summons to the client?
- Making arguments about "business purpose" or some other fact during an audit if it later turns out that the fact was not true?

Conclusion

A few seemingly simple rules:

- Understand the standards that apply;
- Think about competence, due diligence, and your duty to others in your firm;
- Think about what you may not know;
- Be clear about who the client is and use engagement letters;
- Consider whether there is a possibility for a conflict of interest, and if so, determine whether the conflict can or should be waived;
- Exercise due diligence, follow up on leads, do not ignore problems, and remember, if it seems too good to be true, it probably is;
- Be aware of the requirements and limits of confidentiality and privilege; and
- Always be sensitive to potential criminal penalties!

Questions?



Thank You!