Ethics Part 1
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Kizzy is a Lead Analyst with Prudential Retirement, where she provides compliance, plan design and document services for qualified and nonqualified defined contribution plans and has 8 years of compliance, complex recordkeeping correction and consulting experience. She earned her Juris Doctor with high honors from Drake University in 2004 and BA in Management Information Systems from Loras College in 1998. She has received the following designations from the American Society of Pension Professionals and Actuaries (ASPPA); Certified Pension Consultant (CPC), Qualified Pension Administrator (QPA), Qualified 401(k) Administrator (QKA) and Tax-Exempt and Governmental Plan Consultant (TGPC).
Agenda

• Background
• Overview of Circular 230
• Notable Circular 230 Provisions

Background

• 31 U.S.C. § 330 (1884)
  • Post civil-war legislation that became known as the “Horse Act.”
  • Provides Treasury the authority to regulate the admission of representatives of claimants before them and to take disciplinary action.
  • Treasury published guidance for those representatives that evolved into Circular 230.
Background

• Representative must demonstrate:
  • Good character.
  • Good reputation.
  • Necessary qualifications to enable the representative to provide valuable service to clients.
  • Competency to advise and assist clients in presenting their cases.

• The Office of Professional Responsibility (OPR) has been given the exclusive authority for disciplinary proceedings and sanctions.

Overview of Circular 230

• Reference materials:
Overview of Circular 230

- Treasury Department Circular No. 230 (1921)
  - Subpart A: Rules Governing Authority to Practice
  - Subpart B: Duties and Restrictions Relating to Practice Before the Internal Revenue Service (Notable Provisions)
  - Subpart C: Sanctions for Violation of the Regulations
  - Subpart D: Rules Applicable to Disciplinary Proceedings
  - Subpart E: General Provisions
- Revisions as of June 12, 2014

Practice before the Internal Revenue Service (IRS)

- All matters connected with a presentation to the IRS or any of its officers or employees relating to a taxpayer’s rights, privileges or liabilities under laws or regulations administered by the IRS.
- Presentations include (but are not limited to) preparing or filing documents, corresponding/communicating with the IRS, rendering written advice and representing a client at conferences, hearings or meetings.
- Does not include “mere tax return preparation.” (Loving)
Overview of Circular 230

• Who is covered?
  • Attorneys
  • Certified Public Accountants (CPA)
  • Enrolled Agents
  • Enrolled Actuaries
  • Enrolled Retirement Plan Agents (ERPA)
  • Registered Tax Return Preparers
  • § 10.8 – Preparing all or substantially all of a tax return for compensation.

Overview of Circular 230

• Retirement plan related Forms:
  • Form SS-4, Application for Employer Identification Number;
  • Form 1099 series;
  • Form 2848, Power of Attorney and Declaration of Representative;
  • Form 4419, Application for Filing Information Returns Electronically;
  • Form 5300, Application for Determination for Employee Benefit Plan;
  • Form 5307, Application for Determination for Adopters of Master or Prototype or Volume Submitter Plans;
  • Form 5310, Application for Determination for Terminating Plans;
Overview of Circular 230

- Retirement plan related Forms (Continued):
  - Form 5500 Series;
  - Form 8717, User Fee for Employee Plan Determination, Opinion, and Advisory Letter Request;
  - Form 8821, Tax Information Authorization.
  - Form 5558, Application for Extension of Time to File Certain Employee Plan Returns;
  - Form 8955-SSA, Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits;
  - Form 5330, Return of Excise Taxes Related to Employee Benefit Plans; and
  - Form 945, Annual Return of Withheld Federal Income Tax.

- Form 2848 attestation updated July of 2014 to provide under the penalty of perjury that individual acknowledges being subject to the regulations contained in Circular 230.
- Applies whether that individual is defined in the Circular as a practitioner or whether they are proceeding under some of the limited practice provisions.
§ 10.21 Knowledge of client’s omission.

- A practitioner that knows that the client has not complied with the revenue law of the United States or has made an error or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States.
  - Practitioner must advise client of the consequences.

§ 10.22 Diligence as to accuracy.

- Must exercise due diligence in:
  - Preparing, approving and filing tax returns, documents, affidavits and other papers relating to IRS matters.
  - Determining the correctness of oral or written representations made by the practitioner to the IRS or to clients.
- Reliance on another person’s work product – must take reasonable care.
  - Safe harbor for due diligence.
Notable Circular 230 Provisions

§ 10.23 Prompt disposition of pending matters.
• May not unreasonably delay the prompt disposition of any matter before the IRS.

§ 10.27 Fees.
• May not charge an unconscionable fee.

§ 10.28 Return of client’s records.
• In general, must return any and all records of the client that are necessary for the client to comply with Federal tax obligations.
• May retain copies of records returned to the client.
• If state law allows, may be able to retain records in the event of a dispute over fees.
  • Must provide reasonable access to review and copy records that are necessary for client to comply with Federal tax obligations.
§ 10.28 Return of client’s records. (Continued)

- Records include:
  - All documents (written or electronic) provided to or obtained by practitioner.
  - Materials prepared by the client or a third party (not including employee or agent of practitioner) with respect to the subject matter of the representation.
  - Return, claim for refund, schedule, affidavit, appraisal or any other document prepared by practitioner from a prior representation if necessary to comply with current Federal tax obligations.

- Does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the practitioner if withholding pending the client’s payment of fees if contractually obligated.
§ 10.29 Conflicting interests.

- One client’s interest is directly adverse to another; or
- Significant risk of material limitation by responsibilities to:
  - Another client
  - A former client
  - A third person
  - By personal interest of the practitioner

§ 10.29 Conflicting interests. (Continued)

- May represent if:
  - Reasonably believe 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 the conflict is known.
- May consider consulting an objective third party.
Notable Circular 230 Provisions

§ 10.30 Solicitation.
- May not use any form of public communication or private solicitation that contains a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim.
- ERPA or registered tax return preparers may not use the term "certified" or imply an employer/employee relationship with the IRS.
- Example of acceptable description:
  - “Enrolled to practice before the Internal Revenue Service.”

§ 10.34(b) Standards with respect to documents, affidavits and other papers.
- May not advise a client to take a position that is frivolous.
- May not advise a client to submit a document, affidavit or other paper to the IRS:
  - To delay or impede the administration of Federal tax laws.
  - That is frivolous.
  - That contains or omits information in a manner that demonstrates an intentional disregard of a rule or regulation.
§ 10.34(c) Advising clients on potential penalties.
• Must advise client of potential penalties and the opportunity to avoid by disclosure.

§ 10.34(d) Relying on information furnished by clients.
• Generally may rely in good faith without verification.
  • May not ignore actual knowledge.
  • May not ignore implication of other information furnished. May need to make reasonable inquiry.
  • No willful blindness.
  • Look at information versus making a characterization or legal conclusion.
§ 10.35 Competence.
- Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation.
  - May become competent by consulting with experts or studying the relevant law.
  - Updated June 2014.

§ 10.37 Requirements for written advice.
- Must be based on reasonable factual and legal assumptions (including future events).
- Must reasonably consider relevant facts that the practitioner knows or reasonably should know.
- Use reasonable efforts to identify and ascertain relevant facts.
§ 10.37 Requirements for written advice. (Continued)

- May not rely upon representations, statements, findings, or agreements (projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable.
- Relate applicable law and authorities to facts.
- May not take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

Contact Information

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