

2023 NATIONAL INCOME TAX WORKBOOK

CHAPTER 1: ETHICS



CH 1: ETHICS - TOPICS

P. 1

A discussion of the life cycle of a tax engagement

- Engaging the Client
- Maintaining Ongoing Client Relationships
- Terminating the Engagement

10 Case Studies

CH. 1 – ETHICS

P. 1

Important tax practitioner ethics obligations

Information necessary to remain compliant with *Circular 230, Regulations Governing Practice before the IRS*

An analysis of the life cycle of a tax engagement

TOPICS - ENGAGING THE CLIENT

P. 1

Learning Objectives:

- Understand key components of an engagement letter
- Know how to exercise due diligence when obtaining electronic signatures

TOPICS - MAINTAINING ONGOING CLIENT RELATIONSHIPS P. 1

Learning Objectives:

- Know how to respond to third-party information requests
- Comply with ethical duties when representing spouses filing a joint return
- Evaluate whether to continue representing a client

ENGAGING THE CLIENT

ENGAGING THE CLIENT

P. 2

Does engaging a new client create any threats to compliance with ethical rules and standards?

Engagement letters minimize professional liability, improve collections, and ensure a cooperative understanding with the client.

Important to verify authentic and valid signatures of the engagement letter.

ENGAGEMENT LETTERS

P. 2

Circular 230 § 10.36 – Tax practitioners have procedures in place to ensure compliance with ethical obligations

Figure 1.1 – checklist of key provisions of an engagement letter

FIGURE 1.1 – CHECKLIST OF KEY ENGAGEMENT LETTER PROVISIONS

Identity of the client

Designation of agent (if applicable)

Scope of work

Duty to furnish information

Deadline for submitting information

Reliance on information

Tax position clauses

Consent to electronic communication

Payment terms

Stop-work provisions

IDENTITY OF THE CLIENT

P. 2

Engagement Letter

- The engagement letter must address the appropriate parties
- Client should be identified in the opening paragraph
- The engagement letter confirms who is the client, avoids conflicts of interest, and determines who is entitled to information and records

IDENTITY OF THE CLIENT

PP. 2 - 3

Before engaging the client, the practitioner should evaluate if any conflicts of interest exist.

A conflict exists if the representation of a client:

- a. Adversely affects another client
- b. The representation will be severely limited by responsibilities to another client, former client, third party, or personal interest

Example 1.1

- J&S CPAs meet with 50% shareholder (Jael Reed) of NW Builders
- J&S CPAs provide tax advice regarding bonus depreciation on an asset purchase for NW Builders
- Engagement letter should be addressed to an authorized representative of NW Builders
- Engagement letter should make clear that the tax advice is for NW Builders and not any individual shareholders
- Individual shareholders should retain their own independent tax pro

IDENTITY OF THE CLIENT

P. 3

Conflict Waiver

If there is a conflict, a practitioner may represent two parties if:

- The practitioner reasonably believes they will be able to provide competent and diligent representation to each client
- The representation is not prohibited by law
- Each affected client waives the conflict of interest and gives informed consent

IDENTITY OF THE CLIENT

P. 3

Conflict Waiver

- Waiving the conflict of interest and providing informed consent is confirmed in writing by each affected client at the time the existence of the conflict of interest is known by the practitioner

DESIGNATION OF AGENT

P. 3

The engagement letter should identify the person(s) who is entitled to records and other information of the engagement

An engagement letter may require consent to share information with family members, caregivers, or health care providers

If the client is an entity, the designated agent could be an officer, director, or other person representing the entity

SCOPE OF WORK

P. 4

Engagement letter will state which returns / services are being performed

May include information on which services are not being performed

The letter should state the year or time period for which services are being rendered to clearly communicate the terms of the engagement

DUTY TO FURNISH INFORMATION

P. 4

An engagement letter will detail the information the practitioner expects the client to supply.

Examples such as:

- Financial statements
- Ledgers
- Journals
- Bank statements
- Depreciation schedules

May also indicate which format the data should be in.

DUTY TO FURNISH INFORMATION

P. 4

Circular 230

- Obligates the practitioner to establish the facts (of a tax matter).
- Requires a practitioner to use reasonable efforts to ascertain the facts relevant to written advice on each federal tax matter.

In an engagement letter, a description of the information the client must provide helps the practitioner fulfill their obligation to gather facts surrounding the matter(s).

DEADLINE FOR SUBMITTING INFORMATION

P. 4

The engagement letter establishes a date in which the client must furnish the relevant information.

For tax organizers, the letter includes an expected completion date

The letter should also indicate what happens if the client fails to meet the deadline.

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CHAPTER 1 POLLING QUESTION #1

Circular 230 is the publication that helps tax practitioners remain compliant concerning matters before the IRS.

True

False

RELIANCE ON INFORMATION

P. 4-5

A practitioner can generally rely on information without verification

- Circular 230 §10.34

However, to prepare or sign returns, a practitioner must make reasonable inquiries if the information appears to be incorrect, inconsistent, or incomplete

The engagement letter should state it is the client's responsibility to provide complete and accurate information

DUE DILIGENCE – CROSS-REFERENCE

P. 5

The following have specific due diligence requirements greater than general reliance on furnished information:

- Earned Income Tax Credit (EITC)
- Child Tax Credit (CTC)
- Additional Child Tax Credit (ACTC)
- Credit for Other Dependents (ODC)
- American Opportunity Tax Credit (AOTC)
- Filing Status – Head of Household (HoH)

See pp. 34 – 39 of the 2020 National Income Tax Workbook

TAX POSITION CLAUSES

P. 5

Circular 230 § 10.34

A practitioner cannot sign a return where the practitioner knows, or should reasonably know, that a position lacks reasonable basis, takes an unreasonable basis, or is a willful attempt to understate tax liability

A client may want to rely on a position that violates professional standards

To help the practitioner, the engagement letter should state that tax positions will satisfy professional standards

TAX POSITION CLAUSES – CROSS REFERENCE

P. 5

Reasonable basis can be established if there is some authority for a position even if the weight of contrary authority is greater.

The discussion of what is substantial authority is discussed in “Rulings and Cases” in this workbook. (pp. 523-527)

ELECTRONIC COMMUNICATION

P. 5

Practitioners have a duty to protect client confidentiality

Electronic communication such as email may increase the risks of disclosure of confidential information

The engagement letter can confirm the client's consent to using practitioner's policies for electronic communication, storage, and transmission of information

STOP-WORK PROVISIONS

P. 6

A stop work provision in the engagement letter can outline instances where a practitioner would cease work on an engagement

Such instances could include:

- Client failure to pay fees
- A conflict of interest arises
- A client fails to furnish information
- A client refuses advice from the practitioner or insists on a frivolous position
- Other situations that would require the practitioner to act unethically

PAYMENT TERMS

P. 5

Circular 230 § 10.27 a practitioner may not charge an unconscionable fee with any matters before the IRS

This includes tax planning, advice, preparing or filing, and all matters connected with a presentation to the IRS

A fee-clause in the engagement letter ensures that the client is not charged excessively for the work performed

PAYMENT TERMS

P. 5

A letter shows the methods for calculating fees.

It should address the timing of billing, when payments are due, interest charged, and resolving bill disputes .

Retainer fees, additional service charges, reimbursements, and other miscellaneous items can be explained as well.

PAYMENT TERMS

P. 6

Contingent fees are generally prohibited by Circular 230 § 10.27

- A contingent fee is based on whether a position taken avoids challenge or is sustained by the IRS or litigation
- If a specific result is obtained, the fee is charged as a percentage of the refund / tax savings calculated from the position
- In *Ridgely v. Lew*, 55 F. Supp. 3d 89 (D.D.C. 2014), the court found that the IRS lacks statutory authority to regulate the preparation and filing of an ordinary refund claim for a contingent fee.

PAYMENT TERMS

P. 6

Cross Reference:

An exception exists for claims for a credit or refund in connection with statutory interest or penalties assessed by the IRS.

- See “Penalties and Defenses” chapter of this workbook for further discussion

FIGURE 1.2 – SAMPLE ENGAGEMENT LETTER

PP. 7 - 9

Incorporates key provisions.

The letter is intended for educational purposes.

Develop your own well-crafted engagement letter to limit risk and liability. A letter communicates clear rules of engagement with your clients.

ELECTRONIC SIGNATURES

P. 10

A client's electronic signature on a document is binding

Tax practitioners can implement technology and security controls to:

- Ensure authenticity and validity of a signature
- Ensure accuracy and completeness of a document
- Reduce the risk of a challenge to the enforceability of an e-signed document

E-SIGNATURE LAWS

P. 10

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), provides validity to electronic records and signatures pertaining to interstate and foreign commerce.

Allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent.

IRS E-Signatures

- During the pandemic IRS temporarily expanded use of e-signatures
- This is extended to October 31, 2023 (at time of publication)
- IRS must strike a balance between convenience and taxpayer security
- Practitioners should check most recent guidance as to which forms can be e-signed

TYPES OF ELECTRONIC SIGNATURES

P. 11

Acceptable methods of electronic signature include:

- A typed name on a signature block
- A scanned or digitized image of a handwritten signature
- A handwritten signature input onto an electronic signature pad
- A signature, mark, or command input on a display screen with a stylus
- A signature created by third-party software

Digital Signatures

- Are more secure than an e-signature
- Certificate based digital ID
- Encrypts the document
- Prevents changes to the form after signing
- May require dedicated software, photo ID, and creating a PIN

AUTHENTICITY OF E-SIGNATURE

PP. 11-12

The IRS Electronic Signature (e-Signature) Program Manual Transmittal is a useful reference guide to ensure compliance with IRS e-signature policies [see I.R.M. § 10.10.1]

If more than one signer, e-signing process must be designed to separately identify & authenticate each signer.

VALIDITY OF E-SIGNATURE

PP. 12-13

Ascertain that the client validly & reliably assented to the terms of the engagement letter or other electronic document.

For IRS E-File, e-signature should be adopted by a person in a manner that demonstrates the intent of the person(s) to sign the electronic record.

Example 1.2 – Inadvertent Signature

E-SIGNATURE ON CONSENT TO DISCLOSURE

P.13

Consent to use or disclose confidential information may be obtained electronically.

- A taxpayer's signature must be obtained in one of the following manners:
 - Assign a PIN at least 5 characters long
 - Taxpayer types in taxpayer's name and hits "enter"
 - Taxpayer enters 5 or more characters unique to the taxpayer

Q

CHAPTER 1 POLLING QUESTION #2

Clients not understanding taxes is one of the ethical concerns a tax practitioner has in regard to their client(s).

True

False

MAINTAINING ONGOING CLIENT RELATIONSHIPS

THIRD-PARTY COMMUNICATIONS

P. 14

This section discusses the confidentiality and nondisclosure rules

It reviews when a third party may be entitled to information

Finally, it examines two ways that a client can grant authorization to disclose information and records to a third party: **a consent to disclosure** and a **power of attorney**

Cross Reference: Client with Diminished Capacity

If the client has a condition that limits his or her ability to understand, deliberate, make decisions, and/or communicate those decisions, the tax practitioner may have additional ethical responsibilities to ensure that the client (or his or her agent) is able to initiate representation and make informed decisions.

See pages 84–96 in the *2019 National Income Tax Workbook* for a discussion of representing a client with diminished capacity.

PRACTITIONER NOTE – INTEGRITY AND OBJECTIVITY P. 15

When a family member or friend of a client schedules the appointment with the tax practitioner, attends the appointment, and participates in discussions, it may be difficult to ascertain the client's wishes

The tax practitioner must remain objective and avoid subordinating the client's decision-making to that of third party who may have a conflicting or competing interest

CONFIDENTIALITY AND NONDISCLOSURE

P. 15

Ethical obligations regarding confidentiality and nondisclosure come from federal tax law, state law, and professional organization standards

See Practitioner Note (pg. 15) – Duties to Client

I.R.C. §7216 NONDISCLOSURE

P. 15

I.R.C. §7216 *Nondisclosure* – prohibits tax return preparers from knowingly or recklessly disclosing or using a client's information, without the client's specific consent, for any purpose other than tax preparation

Tax return information is ALL information that is used to prepare the return including:

- Name
- Address
- ID numbers
- Working papers
- Computations
- Correspondence from IRS
- Etc.

I.R.C. §7216 NONDISCLOSURE

P. 15

Certain disclosures are permissible without client consent:

- Disclosures to the IRS
- Another preparer in the firm
- Disclosures to related taxpayers (such as spouse)
- Disclosures to process or collect payment
- See Practitioner Note (pg. 15) – Duties to Client

Disclosures, other than permissible disclosures, require *client consent*

OTHER STANDARDS

PP. 15-16

Most states have statutes that make documents prepared by a licensed accountant confidential communications.

Local, state, national, and international accounting boards and organizations have confidentiality requirements for members.

Example: AICPA – Code of Professional Conduct

- A tax practitioner should understand which standards they are subject to to remain compliant.

AUTHORIZED RECIPIENTS

P. 16

To determine if information can be released requires the practitioner to ascertain whether the requester is an authorized recipient

Example: Providing records to the person who provided the records, or the designated representative of an entity

If the requester is not a designated representative, the practitioner should obtain the client's consent to the disclosure

Practitioner Note: I.R.C. § 6103(e) authorizes disclosure to a person with a material interest

CONSENT TO DISCLOSURE

PP. 16-17

Disclosures that are not specifically authorized require preparers to secure signed consent to authorize the disclosure.

Retroactive consent is not allowed.

The consent must be knowing, voluntary and in writing .

Figure 1.3 (pg. 17) – Sample Consent for Disclosure of Information

POWER OF ATTORNEY

P. 18

A power of attorney allows a “principal” to designate another person, an “agent,” to handle his or her personal, financial and legal matters

A power of attorney is *durable* if it remains in effect after the legal incapacity of the principal

Under the Uniform Power of Attorney Act (UPOAA), an agent has authority to access communications on behalf of the principal whether by mail, electronic transmission, telephone, or other means

POWER OF ATTORNEY

P. 18

With respect to taxes, a power of attorney allows an agent to:

- Prepare, sign, and file tax returns
- Pay taxes due, collect refunds, receive confidential information, and contest deficiencies
- Exercise any election(s) available to the principal for federal, state, local, or foreign purposes
- Act for the principal in all tax matters for all periods before the IRS or other taxing authorities

JOINT REPRESENTATION

P. 19

When preparing joint returns for married couples, the practitioner must comply with their duty to be free from conflict of interest

A conflict can arise when:

- There is no clear intent to file a joint return
- There is not acceptance of the joint liability that arises when filing a joint return
- One spouse is responsible for incorrect or incomplete information, but both spouses sign the return and declare it to be correct or complete

JOINT LIABILITY

P. 19

Spouses filing a joint return are jointly and severally liable for the entire tax due on their aggregate income

The intent to file a joint return is important to determine

Stone v. Commissioner – determined it was not essential that the return be signed by both parties to be jointly liable because circumstances showed intent to file jointly

For practitioners, intent to file jointly and acceptance of liability should be ascertained, in writing, at the beginning of the engagement

JOINT SIGNATURES

P. 20

A practitioner representing joint filers should obtain, in advance, the taxpayers' agreement to both sign the return.

If a return is made by an agent, it should be accompanied by a power of attorney.

Under limited circumstances, a spouse may sign as agent for the other spouse due to disease, injury, or continuous absence from the U.S.

DUE DILIGENCE

PP. 20-21

Practitioners should exercise due diligence regarding joint filings and signatures.

Written guidance from spouses, attorneys, or tax practitioners may be necessary to avoid conflicts of interest for joint returns.

A practitioner's duty of confidentiality and nondisclosure may not apply when there is joint representation.

Practitioner Note: Pg. 21

CLIENT CONTINUANCE EVALUATION

P. 21

Tax practitioners should review their client list

Evaluate whether it is prudent to provide ongoing services to a client

Evaluations can help identify clients that may cause ethical issues

Figure 1.4 – Client Evaluation Factors (pg. 22)

Q

CHAPTER 1 POLLING QUESTION #3

An engagement letter helps the practitioner minimize playing phone tag with the client.

True

False

CASE STUDY 1: ENGAGEMENT LETTER PROVISIONS

Figure 1.7, 1.8 & 1.9 – Engagement Letter Clauses

Abacus Accounting sends an engagement letter to every client:

The letter states:

- We are pleased to assist with all returns. We guarantee you will be satisfied with our services.
- \$750 per hour, minimum \$500 with a money-back guarantee.
- Services will continue until either party terminates the relationship.

CASE STUDY 1: RESPONSE

P. 36 - 37

1. Does the engagement letter introductory clause in Figure 1.7 adequately describe the scope of the engagement?

A broad agreement to prepare “all your tax returns” may not clearly communicate the scope of the engagement. It may unintentionally expand the scope of the engagement to, for example, gift tax, sales tax, or other returns. Instead, the engagement letter must identify which returns are being prepared, and it could include a clause that identifies what services will not be performed.

CASE STUDY 1: RESPONSE

PP. 36-37

1. Is the guarantee misleading?

The engagement letter is a contract and not an advertising tool. A practitioner may not, with respect to any IRS matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; The clause in the engagement letter that guarantees satisfaction may create false or unjustified expectations of favorable results.

CASE STUDY 1: RESPONSE

P. 36 - 37

2. Does the engagement letter fee clause in Figure 1.8 comply with the Circular 230 requirements for fees?

Circular 230 § 10.27 prohibits charging an unconscionable fee in connection with any matter before the IRS. Abacus's \$750 per hour may be excessive and unconscionable if it is to perform a simple individual income tax return, particularly if fees charged by other tax practitioners in the area are significantly less. The \$500 minimum is not based on time, labor, skill, or any other objective factor, and could be unconscionable.

CASE STUDY 1: RESPONSE

P. 36-37

2. Does the engagement letter fee clause in Figure 1.8 comply with the Circular 230 requirements for fees?

Abacus's money-back guarantee likely creates a contingent fee arrangement because the amount of the fee for the original return is based on whether the IRS accepts the claimed refund amount. Abacus should determine the amount of its fee based on the effort expended and not the result achieved.

3. Does the engagement letter termination clause in Figure 1.9 create a duty to provide ongoing services?

Abacus's engagement letter termination clause may create an expectation of ongoing work.

Instead, the letter must specifically state the year or years for which services are being rendered and the point at which the engagement is concluded.

Clear termination can avoid unintended liability.

CASE STUDY 2: ELECTRONIC SIGNATURES

PP. 30-31

Carter Tax and Accounting (CTA) sent an engagement letter to Brianna Johnson.

She and her husband signed the letter. CTA sent an organizer back to the email address and Brianna e-signed both of their names.

CTA sent an 8879 E-file Authorization that was signed by both but before the tax return was sent / reviewed by Jamar and Brianna.

CASE STUDY 2: ELECTRONIC SIGNATURES

PP. 30-31

Jamar later receives a penalty for failure to report digital asset income. Jamar claims he never saw the organizer and tells CTA he did not sign it.

Jamar and Brianna have separated and Jamar wants CTA to “fix their mistake”.

1. Does CTA have any liability to Jamar?

There was no disclosure of digital assets in the file, and no indication that the information provided was incorrect or incomplete. The signed engagement letter states that CTA is entitled to rely on information furnished by the taxpayers and that it is substantiated and complete.

1. Does CTA have any liability to Jamar?

Both Brianna and Jamar signed the Form 8879. However, a taxpayer must sign and date Form 8879 only after reviewing the return. CTA, as a tax return preparer and an electronic return originator, was required to provide a copy of the return with the form [I.R.C. § 6107] and could be subject to preparer penalties under I.R.C. § 6695 (failure to furnish) or sanctions under the e-file program.

CASE STUDY 2: RESPONSE

P. 38

2. Can CTA help Jamar apply for innocent spouse relief?

CTA prepared the return for Brianna and Jamar, and they are jointly liable for taxes owed. However, Jamar may be entitled to innocent spouse relief if he did not know about the unreported income.

CTA has a conflict of interest because there is a significant risk that representation of one client will either be directly adverse to the other client or will be materially limited by CTA's responsibilities to the other client.

CTA should give Jamar a referral to some other tax practitioners and advise him to conduct his own due diligence on those practitioners.

3. If the pending divorce will be amicable, can CTA help the Johnsons apply for penalty relief?

Brianna and Jamar could agree to pay the taxes owed and ask CTA to help them apply for penalty relief.

CTA may reasonably believe that they will be able to provide competent and diligent representation to both Brianna and Jamar, and the representation is not prohibited by law. CTA should explain the potential conflict. Both Brianna and Jamar must waive the conflict of interest and give informed consent, confirmed in writing, prior to the representation.

CASE STUDY 3: ERRORS AND OMISSIONS

P. 31

Dixie Bowen prepared 2021, 2022 returns for Wandee Yang.

They meet in January 2024 to discuss preparation of 2023 tax returns.

Wandee asks Dixie why she had not told her about the employee retention credit.

Wandee engaged an online company who amended 2021 employment tax returns to claim the credit.

CASE STUDY 3: ERRORS AND OMISSIONS

P. 31

Dixie asked Wandee if she wanted her to review 2020 returns to confirm eligibility for the credit but Wandee declined.

Dixie advises Wandee she needs to amend 2021 business and personal returns to reduce deductions that are affected by the credit.

CASE STUDY 3: RESPONSE

P. 39 - 40

1. Can Dixie file the 2023 returns?

The IRS guidance concludes that when a practitioner enters into an engagement with a client who has claimed the ERC, wants to claim it, or asks about the possibility, the practitioner needs to have or gain an in-depth knowledge of the credit, especially its eligibility criteria. The practitioner must follow the Circular 230 requirements. If a practitioner has reason to believe that a client's excessive ERC claim is owing to the client's reliance on erroneous or improper advice from another practitioner, tax return preparer, or other third party, the practitioner should, consistent with Circular 230, advise the client of the overstated claim and any additional tax and penalties that could apply and, if requested, competently assist the client in correcting or mitigating the problem.

CASE STUDY 3: RESPONSE

PP. 39-40

2. What if Wandee has a net operating loss carryforward from 2020?

Dixie has a duty to not impede federal tax laws, and a duty to not willfully or recklessly understate a tax liability under Circular 230. Thus, if Dixie knows that the 2023 tax return will contain an error, she cannot ethically submit the return (and may be subject to penalties and sanctions for doing so).

While Wandee ultimately decides whether to submit an amended return, Dixie should explain that if she fails to file an amended return, she could incur more interest and a larger penalty. Unless Dixie can convince Wandee to disclose the error or omission, she must consider whether to withdraw from representing her.

CASE STUDY 3: RESPONSE

PP. 39-40

3. Can or should Dixie report the error to the IRS?

Dixie should inform Wandee promptly upon becoming aware of an error in a previously filed return, advise her of the potential consequences of the error, and recommend corrective measures. However, Dixie is not allowed to inform the taxing authority without the taxpayer's permission, except when required by law.

CASE STUDY 3: RESPONSE

PP. 39-40

3. Can or should Dixie report the error to the IRS?

If Dixie thinks that an unscrupulous return preparer helped Wandee improperly claim an employee retention credit, she can submit Form 3949-A, Information Referral. She can also report instances of fraud and IRS-related phishing attempts to the Treasury Inspector General for Tax Administration by calling 800.366.4484. In reporting, Dixie must comply with her duties of confidentiality and nondisclosure, and the information that she reports should be only information about the unscrupulous preparer, and not information about her client.

Q

CHAPTER 1 POLLING QUESTION #4

A conflict of interest is when representation of a client adversely affects another client.

True

False

CASE STUDY 4: THIRD-PARTY RECORDS REQUEST

P. 32

Sheila is 76 year old and handles her own finances

Tyler drives her to appointments and Sheila named Tyler durable power of attorney if she ever comes incapacitated

Sheila's tax adviser Don suggested a family limited partnership for estate planning purposes

Sheila told her attorney to write up paperwork following the advice of the tax preparer

Two weeks later Tyler calls Don to request a copy of the partnership agreement and tell him that Sheila was contributing additional assets to the FLP

CASE STUDY 4: RESPONSE

P. 40 - 41

1. If Don has a copy of the partnership agreement, can he send it to Tyler?

Despite Tyler's presence at the meeting and participation in the planning discussion, Sheila is Don's client. Don has a duty of confidentiality to Sheila, and without her consent he cannot disclose documents to third parties.

The engagement letter must be addressed to the appropriate party and should identify Sheila as the client in an introductory paragraph. If Tyler will be acting as agent for Sheila, the engagement letter may need to grant consent to consult or share information with him. The engagement letter should identify what records may be shared with Tyler and otherwise comply with the requirements for a consent to disclosure.

2. Can Don take direction from Tyler? If not, what should Don Do?

Although Tyler may be assisting Sheila with her estate planning decisions, Don must look to Sheila, and not family members, to make decisions on Sheila's behalf.

Tyler seems to be directing the transfer of almost all of Sheila's assets to the family limited partnership, including personal use assets. Tyler may have a conflicting or competing interest because the additional transfers will increase the value of the gift to him. Don should schedule a time to meet with Sheila and explain that if she commingles personal and business assets in the partnership and retains the economic benefit of gifted assets, those assets will be included in her gross estate.

CASE STUDY 5: JOINT RETURNS AND CONFIDENTIALITY PP. 32-33

Smith and Taylor CPAs have agreed to prepare a joint return for Emma and Roger.

Emma and Roger have been separated and are in the process of divorcing.

Alison Taylor, their CPA, determined a joint return lowered their tax liability.

The divorce will be amicable and Smith & Taylor has obtained a written conflict waiver and informed consent.

CASE STUDY 5: JOINT RETURNS AND CONFIDENTIALITY PP. 32-33

Roger is claiming a research and development tax credit and Alison has requested more information. Recently Emma received a large cash tip as ski guide.

Roger has told Alison he will provide more detail to her only if she does not share it with Emma. Emma requested Alison not share the tip information with Roger.

CASE STUDY 5: RESPONSE

P. 41 - 42

1. Should / can Alison disclose Roger's trade secrets to Emma?

While the nature and extent of the expenditures is material to qualify for the deduction, the actual trade secrets (formula, ingredients, etc.) may not be material to the representation.

It may be appropriate for Alison to proceed with the representation if Emma and Roger have agreed that Alison can keep this information confidential. Alison could ask Emma and Roger to confer with their independent attorneys and confirm that they consent to nondisclosure unless the trade secrets become material to the return.

2. Should / can Alison disclose Emma's tip income to Roger?

While Alison may not have a duty of confidentiality, and she could tell Roger about the tip income, ongoing representation is prohibited if, under the circumstances, Alison has a conflict of interest and she cannot reasonably conclude that she will be available to provide competent and diligent representation to both Roger and Emma.

Alison should tell Emma that she must report the tip income on the return and advise her about the underpayment penalties. If Alison still insists that Emma keep the information confidential, Alison should terminate the engagement due to a conflict of interest.

CASE STUDY 5: RESPONSE

P. 41 - 42

3. What could Alison have done to avoid this situation?

Because of the risks involved in joint representation, at the beginning of the engagement, Alison should have advised Roger and Emma that the information from either of them will be shared and that Alison will have to withdraw if one client decides that information that is material to the representation should be kept from the other.

Alison should have had Roger and Emma agree, in writing, that by entering into joint representation, they consent to mutual disclosure.

CHAPTER 1 - ETHICS

