



Ethics, Professional Responsibilities and Federal Tax Procedures

Area I

Acronyms & Notes

**SUMMIT
CPA REVIEW**





Circular 230

Page A — Calculations, Acronym Key & Thresholds

Acronym Key

Contingent fee is allowable only in the following 3 situations - RAPE

1. R - R.I.P: Refund - Interest and/or penalties
2. AND
3. P: Proceedings: A judicial proceeding arising under the Internal revenue code
4. E- Examination: IRS examination of an original tax return that was filed within 120 days of receiving a written notice from the IRS of the examination or challenge
 - a. CPA is representing the client in negotiating or contesting the IRS's proposed changes (decisions are made by third party)

Page B — Notes

Notes

Circular 230: Rules governing the authority to practice before the IRS regarding the following:

1. Authority to practice before the IRS
2. Duties and restrictions relating to practice before the IRS
3. Sanctions for violations of the regulations
4. Rules applicable to the disciplinary proceedings

Circular 230 Prohibits the following Key Things For Practitioners

1. Endorsing or negotiating refund checks issued to the client
2. Withholding client records at the request of the client
3. Charging unconscionable fees (Fees that are so unfair or one-sided that it shocks the conscience)

Authority to practice includes the following:

1. Attorneys
2. CPAs
 - a. Must notify the IRS of the identity of any person, who according to their belief, could have the records for the client
 - b. Must not currently be under suspension or disbarment from practice before the IRS
3. Enrolled agents
4. Enrolled actuaries
5. Enrolled retirement plan agents
6. Registered tax return preparers
7. Other persons allowed to represent a taxpayer before the IRS in limited circumstances



Prompt Disposition of pending matters: No practitioner may unreasonably delay any matter before the IRS

Covered Opinion Under Circular 230: Written or electronic advice that concerns one or more federal tax issues related to:

1. A listed transaction (a transaction identified by the IRS as potentially abusive or tax-avoidance related)
2. Any plan or arrangement whose principal or significant purpose is the avoidance or evasion of tax
3. Typically involve complex tax issues and are subject to specific rules under Circular 230. (Does not involve oral/written advice on routine tax matters.)

Written advice: Any advice a tax practitioner provides in writing (including electronic communications) concerning one or more federal tax matters. This advice must meet specific requirements:

1. Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events)
2. Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know
3. Use reasonable efforts to identify and ascertain the facts relevant to written advice on each federal tax matter
4. Not rely upon representations, statements, findings, or agreements of the taxpayer or any other person if reliance on them would be unreasonable
5. Relate applicable law and authorities to facts
6. 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

Advertising and Solicitation Restrictions: No false, misleading, or deceptive statement or claim.

Communicating Fee Information

1. In case of radio and television broadcasting, the broadcast must be recorded, and the practitioner must retain a recording of the actual transmission
2. In the case of direct mail and e-commerce communications, the practitioner must retain a copy of the actual communication, along with a list or other description of persons to whom the communication was mailed or otherwise distributed
3. Copies must be retained by the practitioner for a period of at least 36 months from the date of the last transmission or use

Best Practices for Tax Advisors

1. Communicating with the client regarding the terms of the engagement to determine the client's purpose and use for the advice
2. Establishing the facts and arriving at a conclusion supported by the laws and facts



3. Advising the client about the importance of the conclusions reached
4. Acting fairly and with integrity in practice before the IRS
5. Taking reasonable steps to ensure that all members, associates, and employees of the firm follow procedures that are consistent with the above

Required Conduct By a Preparer of an Income Tax Return

1. Legally minimize the taxpayer's tax liability and abide by the tax code
2. Make a reasonable effort to obtain the necessary information from the taxpayer and make inquiries if the information appears to be incorrect or incomplete
3. Recommend a tax return position only if the preparer has a good faith belief that the position has a realistic possibility of being sustained, if challenged
4. Notify the taxpayer if he/she becomes aware of a tax return error
5. Inform the taxpayer on how to correct the situation of the taxpayer having failed to file a tax return
6. Consider withdrawing from the engagement if the taxpayer does not correct the error or file the return the preparer advised them about
7. Not inform the IRS without the taxpayer's permission

Fees

1. A practitioner may not charge an unconscionable fee in connection with any matter before the IRS
2. Any published written fees must be honored for 30 days

Contingent fee is allowable only in the following 3 situations - RAPE

5. R - R.I.P: Refund - Interest and/or penalties
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7. P: Proceedings: A judicial proceeding arising under the Internal revenue code
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 - a. CPA is representing the client in negotiating or contesting the IRS's proposed changes (decisions are made by third party)

Information to Be Furnished to the IRS

1. The practitioner may withhold information or records he believes in good faith and on reasonable grounds to be privileged
2. Practitioner does not possess the IRS- requested information or records but knows who does, he must inform the IRS

Knowledge of Client Omission: A practitioner who knows of a client's noncompliance with federal tax laws or error or omission on a tax return or other document must advise the client of that noncompliance, error, or omission, and the consequences under the tax law of that noncompliance, error, or omission

1. Discuss the requirements of the Internal Revenue Code with the client and recommend that client amend the return



Diligence as to Accuracy

1. Preparing, approving, and filing tax returns and other documents related to IRS matters
2. Determining the correctness of oral or written representations made by the practitioner to clients or the treasury department
3. Practitioner is presumed to have exercised due diligence when he or she relies on the work product of another person if the practitioner used reasonable care with respect to such reliance

Notary: A public official authorized to witness the signing of documents, verify the identity of the signers, and administer oaths. Their duty is to prevent fraud by ensuring that documents are signed willingly and by the correct individuals.

Assistance From or to Disbarred or Suspended Persons and Former IRS Employees

1. No practitioner can knowingly and directly or indirectly accept help from or assist any person who is under disbarment or suspended from practice before the IRS
2. No practitioner can knowingly accept assistance from any former government employee where either the provisions of Circular 230 or any federal law would be violated

Return of Client Records

1. General Rule: At request of a client, and may keep copies of the records returned to client
2. If state allows: A practitioner may retain records in case of a fee dispute but must provide the client with access to review and copy records as retained

Conflict of Interest: May not represent a client before the IRS if it involves a conflict of interest. Unless the practitioner believes that he or she can competently represent each client, and each affected client waives the conflict of interest. (Must be confirmed in writing within 30 days)

Reasonable Basis: Relying on a reputable accountant or attorney generally gives the taxpayer a reasonable basis



II: Professional Responsibilities and Tax Return Preparer Penalties

Page A — Calculations, Acronym Key & Thresholds

Acronym Key

Tax Return Preparer Penalties for Unethical Behavior - DIRTY SIN

1. D - Diligence: Failure to be diligent in determining a client's eligibility for certain tax benefits
 - a. Penalty
 - b. Due Diligence
 - i. Eligibility checklists
 - ii. Computation worksheets
 - iii. Reasonable inquiries
 - iv. Record retention
2. I - Identification: Identification number missing
3. R - Record keeping: Failure to properly retain records: Keep for three years
4. T - Taxpayer: Failure to provide copy to taxpayer
5. Y S - You Sign: You failed to sign return
6. Failure to furnish identification number of preparer
7. I - Inquiry: Failure to file correct information returns (could be due to lack of inquiry)
 - a. Any person who employed a tax return preparer during the return period must file the information return with the IRS.
 - b. This does not apply if the failure is due to reasonable cause and not willful neglect
 - c. Reasonable Cause Example: Death, serious illness, reliance on incorrect professional advice
8. N - Negotiation: Negotiation of IRS refund check



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Notes

Tax Return Preparer:

1. Any person who prepares for compensation
2. Employs others to prepare for compensation

Exclusions: Does not include a person who

1. Merely furnishes typing, reproducing, or other mechanical assistance
2. Prepares a return or claim for a refund for the person's employer
3. Prepares a return or claim for a refund for another person as a fiduciary (trustee, executor, etc.)
 - a. Example: Employees preparing returns for their own employer are not tax return preparers
4. Volunteers not compensated
5. Those providing only mechanical assistance (data entry)

Unlimited Representation Rights

1. Enrolled agents, CPAs, and attorneys have unlimited representation rights before the IRS
2. Annual filing season program participants who are PTIN holders but do not have a credential and do not participate in the annual filing season program have limited representation rights

Tax Return Preparer Penalties for Unethical Behavior - DIRTY SIN

9. D - Diligence: Failure to be diligent in determining a client's eligibility for certain tax benefits
 - a. Penalty
 - b. Due Diligence
 - i. Eligibility checklists
 - ii. Computation worksheets
 - iii. Reasonable inquiries
 - iv. Record retention
10. I - Identification: Identification number missing
11. R - Record keeping: Failure to properly retain records: Keep for three years
12. T - Taxpayer: Failure to provide copy to taxpayer
13. Y S - You Sign: You failed to sign return
14. Failure to furnish identification number of preparer
15. I - Inquiry: Failure to file correct information returns (could be due to lack of inquiry)
 - a. Any person who employed a tax return preparer during the return period must file the information return with the IRS.
 - b. This does not apply if the failure is due to reasonable cause and not willful neglect
 - c. Reasonable Cause Example: Death, serious illness, reliance on incorrect professional advice
16. N - Negotiation: Negotiation of IRS refund check



Wrongful Disclosure and/or use of tax return information

Penalty

1. 250 for each disclosure (max 10k) and be guilty of a misdemeanor and finder not more than 1k and/or be imprisoned max 1 year

Consent of Client

1. Confidential client information may be disclosed to any party if the client consents release

Exceptions

1. Disclosures allowed by any provision of the IRC
2. Disclosures pursuant to a court order
3. Allowable uses
4. Disclosures and uses permitted by the US treasury regulations for quality and peer reviews and administrative orders

PTIN

1. IRS requires all paid tax return preparers to register with the IRS and obtain a preparer tax identification number
2. An individual who prepares income tax returns for compensation must include the individual's PTIN on the tax returns

Reportable Transaction

1. Any transaction with respect to which information is required to be included with a return or statement because such transaction is a type that the Secretary of the U.S. Treasury department has determined as having a potential for either tax avoidance or tax evasion

Reasonable Basis Standard

1. Reasonable basis is a relatively high standard of tax reporting
2. Significantly higher than not frivolous or not patently improper
3. Not satisfied by a return position that is merely arguable or merely a colorable claim

Understatement Due to an Unreasonable Position

The penalty can be assessed because of the understatement of a taxpayer's liability due to an unreasonable position taken by the taxpayer

1. Unreasonable position: position is unreasonable unless:
 - a. Reasonable basis for a disclosed position exists
 - b. Substantial authority for the position, regardless of disclosure exists; or
 - c. Reasonable to believe that a tax shelter or reportable transaction position would meet the more likely than not standard



Understatement Due to Willful or Reckless Conduct

1. Compensated preparer is liable for a penalty if the preparer's understatement of taxpayer liability on a return or claim for refund is due to the preparer's negligent or intentional disregard of rules and regulations
2. Willful: Willful attempt to understate tax liability
3. Reckless: Reckless or intentional disregard of tax rules and regulations in spite of his signed declaration on the return

Supporting documentation

1. Not required to obtain supporting documentation
2. Make reasonable inquiries if the information provided seems incorrect or incomplete



Role of State Board of Accountancy

1. Sole Power to License
 - a. Statutes in all 50 states grant to state boards of accountancy the sole power to license CPAs
 - b. Requirements vary. They require the CPA exam and all/or some of the following
 - i. Residency requirement
 - ii. Education requirements
 1. CPE credit auditing by state board of accountancy
 - iii. Experience requirements
 - c. State board can license a CPA and can suspend or revoke one
2. Disciplinary Power of State Boards:
 - a. Each state determines what constitutes professional misconduct by a CPA. The three broad categories of misconduct are the following:
 - i. Misconduct while performing accounting services (negligence, fraud dishonestly, etc.)
 - ii. Misconduct outside the scope of accounting services (intoxication from alcohol or drugs that significantly impairs the accountant's ability to perform accounting services, etc.)
 - iii. Criminal conviction (commission of felony, failure to file tax returns, crimes relating to the practice of accounting, etc.)
 - b. Conduct a formal hearing for possible disciplinary action
 - i. Board must find it was more likely than not that the accountants' actions constituted professional misconduct. (Proof beyond a reasonable doubt)
 - ii. Accountant is entitled to due process of law
 - iii. All adverse state board decisions are subject to judicial review
 - c. Five penalties
 - i. Suspension or revocation of license
 - ii. Monetary fine
 - iii. Reprimand or censure
 - iv. Probation
 - v. Requirement for continuing professional education courses

AICPA

1. Professional Code of Conduct: Applies to all members of the AICPA. Many state CPA societies and state boards have incorporated all, or parts of the code.
2. Joint Ethics Enforcement Program (JEEP)
 - a. The AICPA and 49 State Societies created the Joint Ethics Enforcement Program for enforcement of their codes of conduct by means of a single investigation or action
3. Disciplinary Action by the AICPA and State CPA Societies
4. AICPA + State can sanction members: No suspend or revoke



5. Suspend or terminate membership for failure to pay dues or failure to comply with membership retention requirements
6. Membership can be suspended or terminated without a hearing for
 - a. Crime >1 yr
 - b. Willful failure to file any income tax return
 - c. Filing a false or fraudulent income tax return or aiding in one
 - d. Government authority suspended or revoked their license

IRS

1. Criminal and civil penalties

SEC

1. Censure, suspension, or permanent revocation of an accountant's right to practice before the SEC, including right to sign documents

National Association of State Boards of Accountancy (NASBA)

Coordinates the activities of all state boards of accountancy

Why it matters: NASBA acts as a central organization that helps standardize and facilitate licensing and regulation processes across states



III: Federal Tax Procedures and Taxpayer Penalties

Page A — Calculations, Acronym Key & Thresholds

Acronym Key

General Avoidance of Penalties: In addition to various defenses that are available, a taxpayer generally can avoid any penalty by showing that the taxpayer: **RAN**

1. R - Reasonable Cause: Had reasonable cause to support the tax return position
2. A - Acted in good faith
3. N-Neglect: Did not have willful neglect

Page B — Notes

Notes

Earned Income Credit Penalty

1. Statutory restriction on claiming the credit, rather than a penalty
2. Taxpayers who negligently claim the earned income credit may not claim again for the next 2-10 years

Penalty for Failure to Make Sufficient Estimated Income Tax Payments

Taxpayers (including corps, estates, and trusts) who do not have sufficient amounts of withholding and who do not make timely payments of estimated income tax (including self-employment tax) must pay this penalty, which accrues from the date the estimated income tax must be paid until the tax return due date without extensions

Individual Taxpayers: Doesn't apply if individual taxpayers make withholding and estimated payments that are:

1. **Less than or equal to 1,000 of current year tax**
2. **At least 90% of current year tax**
3. 100% of last year tax
4. 110% of last year tax (If AGI exceeded 150k MFJ, 75k Single)
5. Equal to estimated current year tax based upon the annualization of income method

Corporations: Does not apply if the taxpayer owes less than 500 dollars and pay estimated timely tax payments to the lesser of:

1. 100% of CY
2. 100% of PY



General Avoidance of Penalties: In addition to various defenses that are available, a taxpayer generally can avoid any penalty by showing that the taxpayer: **RAN**

4. R - Reasonable Cause: Had reasonable cause to support the tax return position
5. A - Acted in good faith
6. N-Neglect: Did not have willful neglect

Failure to File Penalty – Tax Delinquency

5% of the amount of tax due for each month (or any part of) the return is late up to a maximum of 25%. Other aspects are as follows

1. Return more than 60 days late: Minimum penalty increases to the lesser of 525 or 100% of the tax due for 2025 tax returns filed in 2026
2. If no tax is due there is no penalty
3. Failure to file +failure to pay= failure to file- failure to pay penalty: $0.05 - 0.005 = 4.5\%$
4. Penalty to file a 2025 partnership or S corporation tax return filed in 2026 is 255/month or part thereof (max 12 months) X the number of partners in the partnership during the year

Failure to Pay penalty – Tax Delinquency

1. $\frac{1}{2}\%$ per month up to a maximum of 25% of unpaid tax

Negligence Penalty

1. Penalty Accuracy based for disregard of tax rules
2. 20% of understatement of tax
3. If this penalty is deemed, the following become unavailable: Substantial underpayment of tax, substantial valuation misstatement

Penalty for Substantial Understatement if Tax

1. 20% of the understatement of tax
 - a. Substantial if it exceeds the greater of 10 percent of the correct tax (5% of the correct tax if the understatement is due to the taxpayer overstating QBI deduction) or 5000
 - b. C Corporations other than personal holding companies, an understatement is substantial if the amount of the understatement exceeds the lesser of 10M or the greater of 10K or 10% of the correct tax
2. If the IRS imposes this penalty, then the IRS cannot impose either
 - a. The negligence penalty with respect to an understatement of tax which is not substantial and penalty for disregard of rules or regulations
 - b. The penalty for a substantial valuation misstatement



Penalty for a Substantial Valuation Misstatement

1. 20% of the understatement of tax with respect to a valuation for tax purposes to the extent the understatement exceeds 5k (10k for corporations)
2. Two distinct substantial valuation misstatement standards
3. Defenses for charitable contributions must include good faith, qualified appraisals, and good faith investigation of value
4. Penalty cannot be imposed in addition to the negligence penalty or for substantial understatement

Fraud Penalties

1. 75% of understatement of tax
2. As high as 100,000 and 500,000 for corporations
3. Must prove it was deliberate and beyond a reasonable doubt that the taxpayer willfully and deliberately attempted to evade tax

Forums

U.S. Tax Court

1. **Jurisdiction:** Specialized trial court for federal tax cases only
2. **Tax Payment:** Litigate without paying the disputed tax first
3. **Judge:** Tax Law specialists
4. **Jury:** NOT Available
5. **Appeal:** yes
6. **Creates Precedent:** Yes

U.S. District Court: General Trial Courts handling a wide variety of civil and criminal cases, including tax cases.

1. **Jurisdiction:** Trial court for federal tax cases, Handles both tax and non-tax federal cases. General federal trial court
2. **Tax Payment:** Requires the taxpayer to pay disputed tax first before suing for a refund
3. **Judge:** Generalists
4. **Jury:** Available
7. **Appeal:** yes
8. **Creates Precedent:** Yes

U.S. Court of Federal Claims: Handles claims for money damages against the US government



1. **Jurisdiction:** Has authority over most claims for money damages against the United States, including tax refund claims. Handles cases where taxpayers sue the government for refunds after paying disputed taxes. Specialized trial court for claims against the U.S. government, including tax refund claims.
2. **Tax Payment:** Requires the taxpayer to pay disputed tax first before suing for a refund
3. **Jury:** NOT Available
4. **Judge:** generalist
5. **Appeal:** yes

U.S. Tax Court Small Claims Division

1. **Jurisdiction:** Simplified division for the U.S. Tax Court designed for taxpayers disputing smaller tax deficiencies
2. **Monetary Limit:** \$50,000 in one tax year
3. **Tax Payment:** Litigate without paying the disputed tax first
4. **Judge:** Tax Law specialists
5. **Jury:** NOT Available
6. **Appeal:** yes
7. **Creates Precedent:** No and has little significance for others



Example Displaying Main Differences Between Courts	US tax court small cases division	Regular US tax court	US district court	US federal claims court
Jury available			x	
Litigate w/o paying	x	x		
Losing my appeal to circuit court of appeals				x
Appeal to US court of appeals		x	x	
Creates precedent		x	x	x
Judge specialist	x	x		
Represent himself	x	x	x	x
Hears only federal tax cases	x	x		



Reasonable Basis Standard – 20%- 40%

1. Reasonable basis standard is a tax position that has at least a **20 percent** chance of succeeding, one that is arguable but fairly unlikely to prevail in court
2. Standard is not met if the taxpayer fails to make a reasonable attempt to determine the correctness of a position that seems too good to be true
3. **Disclosure NEEDED**

Does NOT work for Tax Shelters

Substantial Authority: 40%- 50%

Strong legal basis for a tax position, with at least a 40% chance the IRS would accept it. It is a key standard for avoiding penalties on tax returns. Requires stronger support from legal authorities like IRS regulations, court cases, and official rulings. Substantial authority provides better protection against penalties, even if the position is not disclosed.

1. Affirmative Statement in a Revenue Agent's Report
2. Technical Advice Memorandum (TAM)
 - a. IRS-issued guidance on a specific taxpayer's issue, usually during an audit
 - b. Binding for the named taxpayer and can be relied on as substantial authority
3. Determination Letter
 - a. Official IRS letter concluding a tax issue for a specific taxpayer
 - b. Can be relied on as substantial authority by that taxpayer
4. **Disclosure not needed but recommended**

Does NOT work for Tax Shelters

More-Likely-Than- Not Standard: >50%: Greater than 50 percent likelihood of a tax position being upheld by courts.

Disclosure: Required and a higher standard to avoid penalties

Understatement Due to an Unreasonable Position: Unless

1. Reasonable basis for a disclosed position exists, or
2. Substantial authority for the position, regardless of disclosure, exists, or
3. It is reasonable to believe that a tax shelter or reportable transaction position would meet the more-likely-than- not standard
 - a. **Tax Shelter:** Legal strategy or vehicle used by taxpayers to reduce or minimize their taxable income and, therefore, their tax liability. (Legal methods to lower taxable income)



Appeals Process

1. **Start: Revenue Agent and Taxpayer DON'T AGREE and probably hate each other**
2. **Appeals Conference:** Agreement cannot be reached at the revenue agent level; the taxpayer receives a copy of the Revenue Agent's Report and a 30-day letter (preliminary notice) notifying the taxpayer of the right to appeal
 1. **Taxpayer has 30 days to request an administrative appeal with an appeals officer. (Appeals Conference)**
3. **Office of Appeals:** Goal of the appeals process handled by the IRS Office of Appeals is to resolve tax controversies without litigation. If an agreement is reached with the Appeals Decision, the taxpayer signs **Form 870-D (Waiver of Restrictions on Assessment and Collection of Deficiency in Tax)**. Interest stops accruing when the form is received and accepted by the IRS. This settlement is binding between both parties.
 1. **If agreement is NOT Reached, a 90-Day letter will be issued**
4. **90-day letter (notice of deficiency)**
 1. If an appeals conference was not requested after receipt of the 30-day letter or if the taxpayer and IRS still not agree, a 90-day letter is issued

Taxpayer has 90 days to pay the deficiency or file a petition with the U.S. Tax Court if the taxpayer wants to litigate without paying. If the taxpayer prefers the US District Court or US Court of Federal Claims, the taxpayer must first pay the tax deficiency and then sue the IRS for refund in the court if the IRS denies the claims for refund.

Roles

1. **Revenue Agent:** This is the IRS employee who conducts the audit (examination of a taxpayer's return. The revenue agent reviews the return, proposes any adjustments, and tries to reach an agreement with the taxpayer during the audit process.
2. **Appeals Officer (Appeals Division):** If the taxpayer disagrees with the revenue agent's proposed adjustments and cannot reach an agreement, the case can be taken to the IRS Office of Appeals. Their role is to independently review the case and try to settle the dispute without litigation, **often by evaluating the probability of winning the case in course. (only appeal officer not revenue agent can do it)**



Tax Authority Hierarchy

Primary – In Order

1. U.S. Constitution (supreme law)
2. **Internal Revenue Code**
 - a. Foundation of federal tax law, enacted by congress
3. Income Tax Treaties
4. **(IRS Regulations) US Treasury Regulations**
 - a. Official interpretations of the IRC issued by the Treasury department
 - b. Force of law and are considered primary authoritative sources
 - i. Final regulations
 - ii. Temporary regulations
 - iii. Proposed regulations
5. **Judicial Decisions: Tax Court Cases/Decisions**
6. **IRS Revenue rulings and Revenue Procedures**

Secondary Authorities

1. Private letter rulings: IRS rulings for specific taxpayers, not binding on others
2. Technical Advice Memoranda (TAMs): IRS advice on specific taxpayer issues
3. IRS Agent Reports on Prior Years
4. IRS Notices, Announcements, and other administrative pronouncements

Reporting Requirements for Foreign Bank Accounts

1. US person must file FBAR if they have financial interest in, signature, or other authority over a financial account maintained with a financial institution located outside of the US and if the aggregate of those amounts exceed \$10,000



Federal Judicial Process: If no agreement through appeals conference, it must be settled in the Federal Court System. The taxpayer can choose the route through the court system that he or she deems most favorable. Key Concepts include the following:

1. **Burden of Proof:** Party bringing the case has the burden of proof. (Taxpayer) The IRS has burden of proof only on cases proceeding on income, gift estate, or generation-skipping tax with respect to factual issues provided that the taxpayer has introduced credible evidence, has maintained books and records as required, and has complied with reasonable IRS requests.
2. **Doctrine of Stare Decisis:** Like English law, American law is frequently made by judicial decisions. Under the doctrine of stare decisis, judges are required to respect the precedents established by prior judicial decisions on the same set of facts.
3. **Appeal Outcomes:** An appeal can have a number of possible outcomes. The appellate court may affirm (accept) or reverse the lower court's finding or it may send the case back to the lower court for further consideration (remand)



IV: Legal Duties and Responsibilities

Page A — Calculations, Acronym Key & Thresholds

Acronym Key

Elements of Common Law Fraud - **MAIDS**

1. M - Misrepresentation of a material fact
 1. No Fraud without materiality
 2. The misstatement must be material (important enough to influence decisions) Immaterial misstatements do not constitute fraud
2. A - Actual and justifiable reliance by the plaintiff
3. I - Intent to reduce reliance
4. D - Damages suffered by the plaintiff
5. S - Scienter (intent to deceive or reckless disregard for the truth)
 1. Fraud involves intentional misrepresentation or concealment of a material fact that causes damages to the plaintiff who justifiably relied on the misrepresentation

CPA Disclose Information Without Client Consent - **SLUTS**

1. S- Subpoena/summons/Standards (GAAP)
2. L- Lawful Defense of a lawsuit brought by a client
3. U - Use by Prospective purchasers
 1. as long as the prospective purchasers do not disclose the confidential information
 2. Only for review, not transfer
4. S - State CPA society voluntary quality control review boards or panels
5. T- Trial Board (AICPA/State) In defense of an official investigation

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Legal Liabilities

1. Civil actions for tax malpractice are usually based on either traditional contract principles or traditional tort principles.
2. Torts include
 1. Negligence
 2. Constructive fraud (gross negligence)
 3. Actual fraud



Elements of Actual Fraud:

1. Misrepresentation of material fact
2. Intent to deceive
3. Actual and justifiable reliance by plaintiff
4. Intent to induce the plaintiff's reliance and damages

Elements of Constructive Fraud

1. Misrepresentation of a material fact
2. Defendant acts with gross negligence or recklessly
3. Intent to induce plaintiff's reliance
4. Actual and justifiable reliance by plaintiff
5. Damages

Penalties for Breach of Contract by an Accountant

1. Money Damages
 1. Usual and primary penalty
 2. Client + third-party beneficiaries
2. Specific Performance
 1. Requiring the accountant to perform exactly as promised in the contract
 2. Exception: generally not available for personal service contracts (accounting)
 3. Reason: Enforcing specific performance in personal services would be like forcing involuntary servitude which courts avoid
3. Punitive damages
 1. Cash punishment
 2. Not available in contract actions against accountants
 3. Reserved for tort cases involving fraud/intentional wrongdoing
4. Recession
 1. Cancellation or undoing of a contract
 2. Available after a breach
 3. Prefers to recover monetary damages than cancel the contract

Ultra mares Rule: Accountant Liability for Negligence

Definition: Legal standard that limits an accountant's liability for negligence

Accountant is liable for negligence only to:

1. Parties in privity: Those who have a direct contractual relationship with the accountant
2. Intended third-party beneficiaries

Privity: There is a direct contractual relationship between two parties. In accounting, this usually means the CPA and their client have a contract (like an engagement letter). Only parties in privity can sue each other for **breach of contract** because contract law requires that direct relationship.



Elements of Common Law Fraud - MAIDS

1. M - Misrepresentation of a material fact
 1. No Fraud without materiality
 2. The misstatement must be material (important enough to influence decisions) Immaterial misstatements do not constitute fraud
2. A - Actual and justifiable reliance by the plaintiff
3. I - Intent to reduce reliance
4. D - Damages suffered by the plaintiff
5. S - Scienter (intent to deceive or reckless disregard for the truth)
 1. Fraud involves intentional misrepresentation or concealment of a material fact that causes damages to the plaintiff who justifiably relied on the misrepresentation

Elements of Common Law Negligence: Requires proof of the least culpable conduct, a failure to exercise due care. To make out a case for negligence, the plaintiff must show:

1. Owed a Duty of Care
2. Breach of Duty
3. Causation
 1. CPA's breach must be the direct cause of the plaintiff's injury or loss
 2. The breach caused plaintiff's injury
4. Damages

Privileges Available to CPAs

1. Attorney-Client
2. Tax practitioner-Taxpayer
3. Work Product: Protect tangible material produced in preparation for litigation that are requested by an attorney, but not the communication between the attorney and CPA about it

Actual Fraud

1. Requires intent

Constructive Fraud

6. Does not require intent to deceive
7. Involves reckless disregard for the truth or falsity of a material fact
8. Also called gross negligence in some contexts:
9. Plaintiff must prove:
 1. Material misstatement
 2. Reckless behavior by defendant
 3. Justifiable reliance by plaintiff damages suffered



CPA Disclose Information Without Client Consent - SLUTS

1. S- Subpoena/summons/Standards (GAAP)
2. L- Lawful Defense of a lawsuit brought by a client
3. U - Use by Prospective purchasers
 1. as long as the prospective purchasers do not disclose the confidential information
 2. Only for review, not transfer
4. S - State CPA society voluntary quality control review boards or panels
5. T- Trial Board (AICPA/State) In defense of an official investigation