

CHAPTER 1

Ethics

Pages 1-43



1

ETHICS TOPICS

P 1

- ▶ Topic 1: Noncompliance with Laws and Regulations
- ▶ Topic 2: Representation before the IRS
- ▶ Topic 3: Best Practices
- ▶ Topic 4: Contingent Fees and Disreputable Conduct
- ▶ Topic 5: Unauthorized Practice of Law
- ▶ Case Studies

2

TOPIC 1: NONCOMPLIANCE WITH LAWS AND REGULATIONS

P 3 & 573

- ▶ Circular 230 requires due diligence
- ▶ Proposed regulations- due diligence for returns prepared or submitted while representing
- ▶ Circular 230 requires advisement of client and the consequences
- ▶ Proposed Circular 230 §10.21 requires practitioners to explain corrective action to client
- ▶ 10.21 also requires consideration of future representation

3

STANDARDS FOR TAX RETURNS,
DOCUMENTS, AFFIDAVITS

P 4

▶ 10.34 Prohibits submitting information that is frivolous or shows intentional disregard for the purpose of delay or impeding tax laws

▶ May result in penalties or sanctions



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AICPA STANDARDS

P 4

Practitioner must promptly inform the taxpayer when:

1. Error in previously filed return

2. Error in return under audit

3. TP failure to file

4. Error in tax representation engagement

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P 5

CONFIDENTIALITY AND NONDISCLOSURE

6

NONCOMPLIANCE WITH LAWS AND REGULATIONS (NOCLAR)

P 5

Acts of omission or commission, intentional or unintentional that are contrary to prevailing laws or regulations

Examples of NOCLAR are listed on page 6

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PROFESSIONAL RESPONSIBILITIES

P 6

- ▶ Take timely steps to comply with guidance taking into consideration the potential harm
- ▶ Obtain an understanding of the matter – nature of the act and the circumstances
- ▶ Discuss with management
- ▶ Determine if withdrawal is necessary
- ▶ Document

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TOPIC 2 : REPRESENTATION BEFORE THE IRS

P 9

- ▶ Enrolled agents, CPAs and attorneys have unlimited representation rights
- ▶ Preparers without credentials have limited representation rights
- ▶ Annual Filing Season Program (AFSP) participants can represent on returns they prepared and signed
- ▶ Preparer tax identification number holders (PTIN) who do not participate in the AFSP program have no representation rights

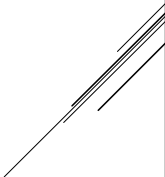
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P 9

ENROLLED AGENT

► Steps to become an enrolled agent:

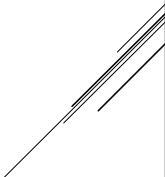
1. Obtain a PTIN
2. Take the 3-part Special Enrollment Examination (SEE)
3. Achieve passing scores on all three parts
4. Apply for enrollment
5. Pass a suitability check



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P 573

ENROLLED RETIREMENT PLAN AGENT

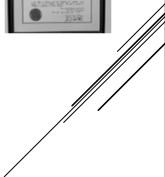


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P 9

CERTIFIED PUBLIC ACCOUNTANTS

1. Must have passed the CPA exam
2. Be licensed by the state board of accountancy
3. Completed a study of accountancy at a college or university
4. Comply with ethical requirements to maintain an active status



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ATTORNEYS

P 10

- ▶ Licensed under state law
- ▶ Earned a degree in law
- ▶ Passed the bar exam



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ANNUAL FILING SEASON PROGRAM (AFSP)

P 10

- ▶ Obtain a certain number of continuing education hours
- ▶ Consent to the obligations under Circular 230
- ▶ Can only represent those whose returns they have prepared
- ▶ Can only represent in front of certain IRS employees
- ▶ Cannot represent those whose returns they did not prepare and cannot represent in front of collection and appeals
- ▶ Must have valid Record of Completion for the calendar year of the return being represented and in which representation occurs

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REGISTERED TAX RETURN PREPARERS

P 11

- ▶ No longer exist
- ▶ IRS attempted to put standards on return preparation that were unrelated to representation
- ▶ Loving challenged IRS authority to regulate return preparers
- ▶ "Practice before the IRS" does not include return preparation
- ▶ Proposed regulations amend Circular 230 to remove the term "registered tax return preparers"
- ▶ Defines practice before the IRS

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SUBSTANTIAL AUTHORITY (CH 13)

P 497

Substantial Understatement Penalty

§6662 imposes a penalty on the understatement of tax due to the following:

1. Negligence
2. Substantial understatement
3. Substantial valuation misstatement
4. Substantial overstatement of pension liabilities

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SUBSTANTIAL AUTHORITY

P 497

5. Substantial estate or gift tax valuation understatement
6. Disallowance of claimed tax benefits for lack of economic substance
7. Undisclosed foreign assets
8. Inconsistent estate basis
9. Overstatement of the 2021 above the line contributions
10. Disallowance of conservation contributions

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SUBSTANTIAL AUTHORITY

P 498

The penalty does not apply if there is *substantial authority* for the position **OR** if the taxpayer adequately discloses the relevant facts and there is *reasonable basis*

This Penalty is Unlawful
Author is Excluded under 25C
2014

Substantial Authority – The weight of the authorities supporting the position is greater than those supporting contrary positions

- ▶ Possibility of audit not relevant
- ▶ Most recent rulings will take priority
- ▶ Facts in ruling relied on must be sufficiently similar

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SUBSTANTIAL AUTHORITY

P 498

Reasonable Basis – This is a lesser standard than Substantial Authority

- ▶ Some authority for the position even if the weight of the contrary position is greater
- ▶ Cannot be merely arguable



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SUBSTANTIAL AUTHORITY

P 498

- ▶ US Code Chapter 26 – Unless federal court determines it unconstitutional
- ▶ Proposed, Temporary, and Final Regulations
- ▶ Revenue Rulings and Revenue Procedures
- ▶ Federal Court Cases – Have a hierarchy of authority and geographic jurisdiction
 1. US Supreme Court
 2. US Circuit Court of Appeals and trial courts, US Tax Court, and federal specialty courts such as bankruptcy
- ▶ Private Letter Ruling and Technical Advice Memorandum
- ▶ Action on Decision– Acquiescence or non-acquiescence
- ▶ IRS Information Releases, Notices and Announcements
- ▶ Tax Opinions – Written opinion of a lawyer

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CASE STUDY #2: SAFEGUARDING DATA

P 28

- ▶ Anytime hired 12 new employees
- ▶ Gave basic tax prep class
- ▶ New workstation and computer for each
- ▶ "Get to work!"



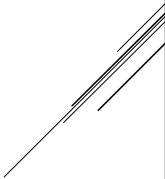
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CASE STUDY #2: SAFEGUARDING DATA

P 28

A. Chance LeGrange

TO: Chance@AnytimeTaxPrep.Net
FROM: @IRS.Gov
RE: CAF Verification
We need your help to verify your Central Authorization File (CAF) number. Please follow this link to confirm your CAF Number. IRS.gov/CAF/Confirmation

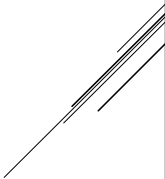


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CASE STUDY #2: SAFEGUARDING DATA

A. Chance LeGrange

- ▶ Fake IRS website
- ▶ Compromised CAF can be used to obtain transcripts
- ▶ Can be used to obtain sensitive personal information



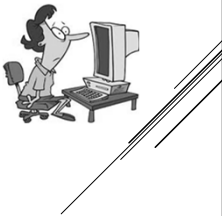
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CASE STUDY #2: SAFEGUARDING DATA

P 28

B. Vera Lee

New security update is installed, to complete installation reboot is required.



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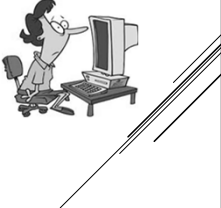
CASE STUDY #2: SAFEGUARDING DATA

P 28

B. Vera Lee

▶ Continuously postponing computer updates increases the vulnerability to viruses, malware and attacks

▶ Could lead to unauthorized access



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CASE STUDY #2: SAFEGUARDING DATA

P 29

C. Ed Monahan

▶ Forgot his password

▶ Created new one using "Anytime123"



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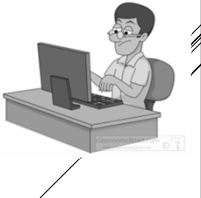
CASE STUDY #2: SAFEGUARDING DATA

P 30

C. Ed Monahan

▶ Weak password was chosen

▶ Can lead to data breaches and identity theft



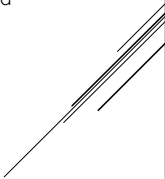
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CASE STUDY #2: SAFEGUARDING DATA

P 29

What could Anytime have done differently?

- ▶ Required to develop a WISP – include a data safeguard policy
- ▶ Security software
- ▶ Training



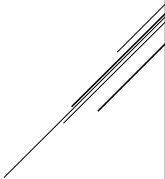
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CASE STUDY #3 RELIANCE ON TOOLS

P 29

Anytime Tax Prep hired an IT provider, adopted a WISP, and implemented security safeguards.

- ▶ They now advertise:
- ▶ **Powerful Algorithms**
- ▶ **Predictive Analytics**



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CASE STUDY #3

P 29

Powerful Algorithms

Our AI-powered tax research tool uses powerful algorithms to provide accurate, experience-based insight. Enter your tax questions in the search box. The algorithm draws on thousands of primary sources and expert editorial commentary to quickly generate authoritative answers.



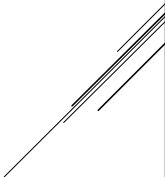
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CASE STUDY #3 RELIANCE ON TOOLS

P 29

1. By making the AI research tool available, is Anytime giving tax advice, and does it need to comply with due diligence and other standards for giving tax advice?

2. How can Anytime comply with its ethical duties if it uses the predictive analytics tool?



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CASE STUDY #3 RESPONSE

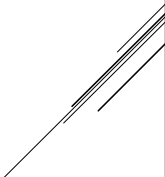
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▶ AICPA SSTS No 1.4.2 defines a *tool* as a resource used in the provision of tax services

▶ Basic principles- must base written advice on factual and legal assumptions, reasonable facts and circumstances

▶ Adding AI to website might create an expectation that the search results are tax advice

▶ Anytime may want to include a disclaimer



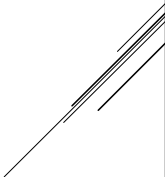
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CASE STUDY #3 RESPONSE

P 34

▶ Disclaimer:

The result of a search using this engine is not a substitute for tax advice because the search engine may not possess the expertise to interpret questions, exercise judgment, and be accountable for the answers. AI should not replace professional judgment in critical decision-making processes, and you should consult a trained tax professional to evaluate the research results received and verify that the information is consistent with current tax laws and regulations. Call our office to speak to one of our experienced tax practitioners.



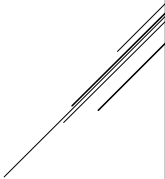
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CASE STUDY #3

Predictive Analytics

Data-driven analytics allow us to quickly analyze vast datasets, identify patterns, anomalies, and potential risks. Automated notifications of IRS tax transcript changes allow us to monitor our customers' accounts and alert them about identity theft, fraud, and other potential risks such as a federal tax lien or pending audit.



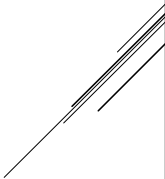
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P 29

CASE STUDY #3 RELIANCE ON TOOLS

1. By making the AI research tool available, is Anytime giving tax advice, and does it need to comply with due diligence and other standards for giving tax advice?

2. **How can Anytime comply with its ethical duties if it uses the predictive analytics tool?**



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P 34

CASE STUDY #3 RESPONSE

► Anytime has the duty to protect data obtained

► Should limit the amount of taxpayer data collected

► This tool automatically retrieves data from tax transcripts

► Could be helpful to let the practitioner know about missing information or an examination

► Could set an expectation of on-going relationship and duties

► See clause in the engagement letter on page 35



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CASE STUDY #5 NONCOMPLIANCE
WITH LAWS AND REGULATIONS

P 29

► A-Plus Accounting provides payroll and tax return preparation for Sweetgrass dispensary

► Sweetgrass sells natural supplements, organic skincare, marijuana...

► Cash business

► Rewards program



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CASE STUDY #5

P 29

Managing partner, Kenji of A-Plus suspects the following:

► Sweetgrass is deducting cost of future loyalty point redemptions

► Employees don't record income at the time of sale

► Not all income is reported. Owners divert income to personal accounts

► Inventory is taken for personal use and not accounted for



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CASE STUDY #5

1. To what extent is A-Plus expected to look for and recognize noncompliance with laws and regulations (NOCLAR)?

2. If Kenji suspects NOCLAR, what should he do?



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CASE STUDY #5 RESPONSE

P 36

Question 1

- ▶ A- Plus is not expected to recognize NOCLAR or suspect NOCLAR beyond their training or beyond what they have been engaged for
- ▶ Ex. Not expected to recognize Sweetwater making unsubstantiated claims about the health benefits
- ▶ Should recognize can only deduct value of the loyalty points in year of redemption
- ▶ Should attempt to obtain relevant information to substantiate the suspicion

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CASE STUDY #5

P 29

1. To what extent is A-Plus expected to look for and recognize noncompliance with laws and regulations (NOCLAR)?
2. If Kenji suspects NOCLAR, what should he do?



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CASE STUDY #5 RESPONSE

P 36

Question #2

- ▶ First seek an understanding of the matter, including the nature and circumstances
- ▶ Discuss with the owners of Sweetwater
- ▶ Determine whether withdrawal from the engagement is necessary
- ▶ Kenji should consider engaging legal counsel
- ▶ Document the matter and the results of the discussion with management

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CASE STUDY #6 TAX RETURN ERRORS AND OMISSIONS

P 30

▶ Alicia Goldstein sole practitioner CPA

▶ Gavin Knox Uber/Lyft driver – Instacart shopper

▶ Gavin claimed a \$14,500 refundable fuel tax credit in 2024

▶ 1099K from eBay shows \$25,000 payment trans & \$20,000 fwh



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CASE STUDY #6

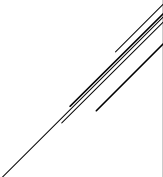
P 30

1. Does Alicia have a duty to ask Gavin about the claimed fuel tax credit?

2. Does Alicia have a duty to ask about the eBay information return?

3. If Alicia determines that Gavin erroneously claimed the fuel tax credit, what should she do?

4. If Alicia suspects that Gavin claimed fraudulent withholding amounts on the 1099-K, what should she do?



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CASE STUDY #6 RESPONSE

P 37

1. Does Alicia have a duty to ask Gavin about the claimed fuel tax credit?

▶ Under Circular 230 must exercise due diligence

▶ Can't ignore the implication for the information

▶ Fuel tax credit is only for off-highway and farming

▶ Must make reasonable inquiries



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P 37

CASE STUDY #6 RESPONSE

2. Does Alicia have a duty to ask about the eBay information return?

▶ \$20,000 is high for the \$25,000 reported sales

▶ Alicia suspects that Gavin may have fallen for a scam

▶ Alicia must make reasonable inquiries

▶ If Gavin claims no sales history, she should advise him to look for other signs of identity theft.

ebay

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P 37

CASE STUDY #6 RESPONSE

3. If Alicia determines that Gavin erroneously claimed the fuel tax credit, what should she do?

▶ AICPA standards state that if a CPA becomes aware of errors on previously filed returns, he should inform the client and the potential consequences and advise on corrective measures

▶ Filings based on frivolous positions are subject to §6702(a) penalty of \$5000 for each improper credit

▶ Alicia is not allowed to inform the taxing authority without Gavin's permission, but should consider whether she should continue to engage

Uber

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P 37

CASE STUDY #6 RESPONSE

4. If Alicia suspects that Gavin claimed fraudulent withholding amounts on the 1099-K, what should she do?

▶ Under Circular 230 a tax practitioner cannot advise a client to submit a false document

▶ She should advise Gavin regarding the potential penalties

▶ If Gavin persists in claiming the false withholding, Alicia must decline to prepare the return

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Attention:

Copy A of this form is provided for informational purposes only. Copy A appears in red, similar to the official IRS form. The official printed version of Copy A of this IRS form is scannable, but the online version of it, printed from this website, is not. Do **not** print and file copy A downloaded from this website; a penalty may be imposed for filing with the IRS information return forms that can't be scanned. See part O in the current General Instructions for Certain Information Returns, available at [IRS.gov/Form1099](https://www.irs.gov/Form1099), for more information about penalties.

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CASE STUDY #9 SOLICITATION AND DISREPUTABLE CONDUCT

- ▶ Lucinda Graham new accounting and finance graduate
- ▶ One of only 2 accounting firms in Eureka, Montana
- ▶ To get new clients she volunteers at the local food bank, community outreach, and writes a tax advice column in local paper
- ▶ Lucinda joined a fraternal organization and a Nordic ski club

P 31



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CASE STUDY #9

P 31

- ▶ Hill and Clark (H&C) her only competitor posts the following reviews on their website:

H&C provided exceptional service. We sold our business and I thought we were going to have to pay a lot of taxes, but they got us a \$17,500 refund on our tax return.
—Anonymous.

Working with H&C has been amazing. They found deductions that my prior accounting firm missed. Their attention to detail is remarkable and I highly recommend them for all your tax and accounting needs.
—George P.

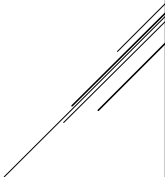
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CASE STUDY #9

P 31

► H&Cs office advertises tax preparation starting at \$100 and Facebook promises the following:

We work with your medical providers to help you claim health and wellness deductions. You can join a gym or subscribe to a specialty meal delivery service and save money on your taxes.



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CASE STUDY #9

P 31

1. Has H & C engaged in prohibited conduct?

2. What should Lucinda do?



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CASE STUDY #9 RESPONSE

P 40

Reviews

► Lucinda suspects fake reviews

► Fake reviews are a violation of an FTC rule

► May also be in violation of state law

\$100 fee

► AICPA code prohibits false, misleading advertising

Facebook advertising

► Promises a medical expense for something that doesn't qualify

► Circular 230 §10.51 includes this in disreputable conduct



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CASE STUDY #9 RESPONSE

P 40



▶ Lucinda could report the fake reviews to the FTC

▶ She could report the Circular 230 violations to the IRS using Form 14242, Report Suspected Abusive Tax Promotions or Preparers

▶ Not under any obligation to report H&C

▶ She could use her newspaper column to educate the public by explaining what medical expenses are deductible

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PLEASE USE THIS LINK TO TAKE THE SURVEY:



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