

EA Test Part 3 Review Notes

These are my review notes for the 2023-2024 (based on the 2022 tax year laws) EA test Part 3. This is a very abbreviated and concise summary of the information, so it's intended only for review after you have already learned the material from a training course.

See <https://taxmodern.com/exams> for the latest version and other notes. These notes are based on the <https://www.passkeyonline.com/> EA exam training course, which I highly recommend (I'm not affiliated with them at all). I tried Gleim, FastForward, and some of the others but I think the PassKey videos are just more enjoyable to watch and easier to learn from. And it's also far cheaper than any of the other EA courses as well.

Forms

23 - Enrolled Agent Application

656 - Offer in Compromise Program "Doubt as to collectibility"

656-L - Offer in Compromise Program "Doubt as to liability".

911 - Taxpayer Advocate Service

1127 - Extension of Time for Payment

2848 - Power of Attorney and Declaration of Representative

4564 - Information Document Request (IDR)

8275 - Tax Position Disclosure Statement:

8275-R - Tax Position on Regulation Disclosure Statement

8821 - Tax Information Authorization

8862 - Claim Credits after Disallowance

8857 - Seeking Relief from Joint Liability:

8867 - Paid Preparer's Due Diligence Checklist

8879 - e-file Signature Authorization

8886 - Reportable Transaction Disclosure

8888 - Allocation of Refund

8944 - E-file Hardship Exemption

8948 - Preparer Explanation for Not Filing Electronically.

9423 - Collection Appeal Request

9465 - Installment Agreement Request

12153 - Request for a Collection Due Process or Equivalent Hearing

13551 - CAA Application

14157 - Return Preparer Complain

Legal Authority

See <https://njsea.org/files/u-s-federal-tax-law-hierarchy-quick-reference-chart.pdf>

- 3 branches of government -> Executive -> includes IRS + Treasury Department.
- **Treasury Inspector General for Tax Administration (TIGTA)**: has oversight over IRS activities. Authorized by title 31 USC §330.
- **Primary authority**:
 - **Title 26 - Internal Revenue Code (IRC)**:
 - Also **Title 31 - Bank Secrecy Act**: FBAR, etc. Filed with the Financial Crimes and Enforcement Network (FinCEN), but enforcement was delegated to the IRS in 2003.
 - **Supreme Court rulings**
- **Substantial authority**: Can be used in court.
 - **Treasury Regulations**: The IRC authorizes the Treasury to interpret the IRC. Written by the IRS's Office of the Chief Counsel and approved by the US Treasury Secretary. Published in the Federal Register, then organized and codified in the Code of Federal Regulations (CFR).
 - Types:
 - **Legislative** Regulations: (more authoritative) Congress expressly delegates authority to the Treasury/IRS to provide the requirements.
 - **Interpretive** Regulations: (less authoritative) No grant of authority to interpret, so may be challenged on the grounds they don't reflect Congressional intent.
 - **Procedural** Regulations
 - Classifications (stages):
 - **Proposed** regulations: Public commentary.
 - **Temporary** regulations: For 3 years. May never become final. (Didn't used to expire.)
 - **Final** regulations: Published in the Federal Register.
 - **Court challenge**: IRS is bound to follow its regulations, but the courts are not. The regulations can be challenged in court (but not by appealing to the IRS).
 - **Can be challenged if**: outside power of the Treasury, conflicts with a statute, deemed unreasonable by the courts.
 - Court cases
 - Administrative pronouncements
 - Tax treaties
 - Congressional intent, as reflected in committee reports.
 - IRS FAQs since October 2021 ?
- **IRS Guidance**: (IRS Publications) *Not substantial authority* to avoid understatement or accuracy related penalties. Not binding in court, but can be used for guidance.
 - **IRS publications and form instructions**
 - **Revenue Rulings**: States an IRS position. Numbered each year ("2022-1", etc.).
 - **Revenue Procedures**: Instructions concerning an IRS position.
 - **Private letter rulings (PLR)**: TP requested guidance. Legally binding to the IRS if the TP gave full/accurate info. Made public, but with personal info redacted. Costs \$10k+.
 - **Technical advice memoranda (TAMS)**: *Internal* guidance from the IRS Office of Chief Counsel on request of the IRS director.
 - **Internal Revenue Manual (IRM)**: For IRS employees to follow, but is public.

- IRS notices: Misc.

Freedom of Information Act Requests (FOIA)

- **Uses:** Can get copy of client's audit records. Request own Centralized Authorization File (CAF) client list.
- **Required they comply except:** national security, the privacy of individuals, the proprietary interests of business, the functioning of the government, and other vital recognized interests.
- **20** business days to respond (supposed to).

IRS Divisions

- **Large Business & International Division (LB&I):** Assets > \$10M.
- **Small Business/Self-Employed Division (SB/SE):** Assets < \$10M, gift tax, estates, Sch. C/E/F, etc.
- **Wage and Investment Division:** Domestic W-2 employee TPs.
- **Tax-Exempt and Government Entities Division:** Employee plans (including IRAs), exempt organizations, and government entities.

Taxpayer Bill of Rights

- The Right to Be Informed
- The Right to Quality Service
- The Right to Pay No More than the Correct Amount of Tax
- The Right to Challenge the IRS's Position and Be Heard
- The Right to Appeal an IRS Decision in an Independent Forum
- The Right to Finality
- The Right to Privacy
- The Right to Confidentiality
- The Right to Retain Representation
- The Right to a Fair and Just Tax System

Taxpayer Advocate Service (TAS)

- Independent org within the IRS. Free.
- Form 911

Practice Before the IRS

Publication 947 (read)

"Practice before the IRS":

- Corresponding and communicating with the IRS
- Representing a TP at conferences, hearings, or meetings with the IRS
- Preparing/filing documents with the IRS (but not tax returns).
- Providing written advice that has a potential for tax avoidance/evasion

Not "practice before the IRS":

- Representation of TPs before the US Tax Court (is separate)

- Being a witness for a TP (but not advocating/helping the TP).
- Preparing a tax return.

Court Cases:

- Loving vs. IRS (2014): IRS lost -> IRS can't mandate education requirements for tax preparers.
- Steele vs. United States (2017): IRS lost -> can't charge a fee for PTINs. Then IRS won on appeal, so can charge for PTINs.
- Sexton vs. Hawkins: Can't stop felons from preparing tax returns.

Enrolled Practitioners:

- Attorneys, CPAs, EAs: Unlimited practicing.
- Enrolled Actuaries: Limited to actuary stuff.
- Enrolled Retirement Plan Agents (ERPAs): Limited to retirement plan stuff.

IRS departments:

- **Return Preparer Office (RPO):** Issues PTINs, AFSP testing, and continuing ed.

Unenrolled Tax Return Preparers

Can not:

- Represent TPs before appeals officers, revenue officers, counsel, or similar officers, or employees of the IRS or Department of Treasury.
- Execute closing agreements
- Extend the statutory period for tax assessments or collection of tax
- Execute waivers
- Execute claims for refund
- Sign any document on behalf of a taxpayer

Annual Filing Season Program (AFSP)

- Voluntary, non-credentialed preparers, just "record of completion".
- **Requirements:** Having a PTIN, consent to duties/restrictions in Circular 230, pass a comprehension test after taking a course. Then **18** hours of CE, including **6** hours Annual Federal Tax Refresher.
 - **Refresher course/exam exempt if:** Did state program for OR, CA, or MD. Or passed SEE Part 1. VITA volunteers. Or Accreditation Council for Accountancy and Taxation's Accredited Business Accountant/Advisor (ABA), or Accredited Tax Preparer (ATP).
- Can represent the TP only for a tax return the preparer did and signed. And only before the examination division of the IRS.

Limited Practice Due to "Special Relationship":

- **Self**
- **Family** member: Includes spouse, child, parent, brother, or sister.
- An **officer**: of a corporation (including a parent, subsidiary, or affiliated corporation), association, organized group, or governmental agency.
- A **partner**: A GP (not an LP).

- An **employee**: A regular full-time employee can represent his employer. An employer can be an individual, partnership, corporation, association, trust, receivership, guardianship, estate, or organized group, or a governmental unit, agency, or authority.
- A **fiduciary**: A fiduciary (trustee, executor, personal representative, administrator, receiver, or guardian).
- **Qualifying Student or Law Graduate working in a LITC or STCP**: A taxpayer may authorize a student who works in a qualified Low Income Taxpayer Clinic (LITC) or Student Tax Clinic Program (STCP) to represent them under a special appearance authorization issued by the Taxpayer Advocate Service.
- **Authorization for Special Appearances**: Request made to the OPR, Commissioner of the IRS or a delegate can authorize it.

Not eligible:

- Lost eligibility because of **suspension or disbarment by the OPR**, or not meeting the requirements for renewal (lacking CE, etc.).
- Anyone lost eligibility to practice before the IRS, **even if named as power of attorney**.

PTIN

- Required if paid to prepare a return (if there is **agreement for compensation**, but gifts ok), or to be an **EA**. US citizenship not required. Must be a real person (not a corporation, association, partnership, etc.).
- **Not required for**: Tax advice about future events. Typing/copying assistance. Employee preparing a return for an employer. Fiduciary for a trust/estate. VITA/TCPE volunteers. IRS employee.

EFIN

- Needed to e-file returns. Foreigners without an SS # are not eligible.

Enrolled Agent Licensing

- Either complete the **EA exams**, or **5 years of experience with the IRS** with recommendation of their superior officer. Also must be **18+**, pass a **background check**. Apply with **Form 23**.
- **Denial of enrollment**: Disreputable acts, failure to file returns or pay taxes. RPO must inform the applicant. Can appeal within **30** days.
- **Renewal**: Every 3 years. Between 11/1 and 1/31 (prior to 4/1 of the year the next enrollment cycle begins). Will check to see if the EA filed / paid taxes on time.
- **CE**: **72** hours for each **3** year cycle (is **2** hours/month for the first partial cycle) . Min. of **16** hours/year, including **2** hours/year of tax ethics.

IRS Power of Attorney (POA)

- **Form 2848** - Power of Attorney and Declaration of Representative
 - Up to 4 tax practitioners authorized per form, personal name (not company name), PTIN if have one.
 - One form per TP (even if MFJ filers, have to do both separately).
 - Can be used by unenrolled people if for a **close family** member, **executor** for an estate, or **AFSP** for only the returns they filed.

- Must **specify** tax years, limited to **3 future years** from date of the POA.
- **Termination:** Is terminated if the TP becomes incapacitated/incompetent. Or the TP revokes it, or the preparer withdraws it (must write "revoke" or "withdraw" and mail/fax the 2848).
- **Not required for:** Preparing a return, providing info to the IRS at their request, using form 8821 Tax Information Authorization instead, third party designee via the checkbox on the return, tax matters partner as part of a partnership, a fiduciary/executor about the estate.
- **Durable Power of Attorney:** non-IRS POA. Can continue if the TP becomes incapacitated/incompetent, but ends on death. Accepted by the IRS if contains all of the information on a form 2848 with a signed statement.

Form 8821, Tax Information Authorization

- Also used by mortgage lenders, employers, etc. to get tax info.
- Not to represent the TP, just to get info.
- Specify prior years, and up to 3 future years.

Centralized Authorization File (CAF)

- IRS's computer database record of authorizations (form 2848/8821). Get a 9-digit CAF number with the first one.

Third-Party Authorizations

- "Checkbox authority" on the 1040. Only to ask about processing of the current year tax return, expires on the next year's return due date. Can't be used for past tax year returns. Useful to call to ask about refund status.

Privacy of Taxpayer Information

- **Section 7216** - Unauthorized disclosure of TP tax return info. Civil penalties (even if accidental) + criminal penalties (if knowing/reckless).
 - **Ok to disclose:** Related TP (spouses, *minor* child & parent, grandchild/grandparent, GP in a partnership, trust/estate beneficiary, fiduciary/executor of the estate of the deceased TP (verify "letter of Testamentary"), corporate shareholder, members of a controlled group of corps. TP's interest is not adverse, and disclosure isn't prohibited (by court, etc.).
 - **Other consent not required:** court order / subpoena (must specify the document), federal/state government agency (admin order, etc from IRS etc), to report a crime to authorities (even if wrong), for peer reviews (for CPAs), to preparer's attorney or IRS in connection with investigation of the preparer.
 - Should get written disclosure if estranged spouses. If requested from a mortgage broker etc, just give the info to the TP to give to them.
- **Limited Confidentiality Privilege**
 - For credentialed professionals.
 - **Federally Authorized Tax Practitioner Confidentiality Privilege (FATP)** - Noncriminal tax matters before the IRS, or federal court case by/against the US. IRS only, not other government agencies.
 - **Not:** Criminal matters, tax shelter, state tax, the tax return itself. .

Certified Acceptance Agents (CAA)

- **To get an ITIN:** ITINs expire after 3 years of not being used.
 - TP can mail original password/birth certificate.
 - Go in person to IRS service center.
 - Use a CAA
- **Form 13551 CAA Application:** To become a CAA. Don't have to be an EA.

Circular 230

(but not updated since 2013).

Diligence as to Accuracy §10.22: Due diligence is required

- **Reliance on Others:** Presumed to have exercised due diligence if relies on the work product of another and it seems consistent/complete. (e.j. Using past year depreciation schedule.)

Best Practices §10.33: Good to do but not mandatory.

https://www.irs.gov/pub/irs-utl/guidance_regarding_professional_obligations_under_circular_230.pdf

- Communicate clearly with the client about the terms (engagement letter)..
- Reasonable facts/assumptions/application of law.
- Advise client of conclusions reached and the impact of it.
- Acting fairly and with integrity.

Competence §10.35: Having appropriate level of knowledge/skill from consultation, study, etc.

Knowledge of Client's Omission §10.21: From past return, while consulting, etc. Must notify client of error/omission promptly and explain consequences. But not responsible for correcting it or notifying the IRS.

Conflicts of Interest §10.29: Clients are adverse, ex-spouses, etc. involve two clients, self, or third party.

- **Must:** reasonably believe can **provide competent/diligent representation**. **Not prohibited** by law. Clients waives the conflict of interest and gives informed **consent in writing, within 30 days** of giving any non-written consent (identifying the nature of the conflict). Retain for **36 months after** end of representation.

IRS Information Requests §10.20: Practitioner must comply and submit records promptly, or tell them who has the records, or make a "reasonable inquiry" of the client about the location of the records.

- Practitioner not required to ask any third party, or verify any info.
- Practitioner may not interfere with the request if it's lawful and not privileged under section 7525.

Return of Client Records §10.28: Have to return client's records on request. Don't have to return work product that they haven't paid for. Practitioner may retain copies of records.

Copies of Tax Returns - IRC §6107: preparers are required to give a copy of a return to the TP on or before the time that the TP signs it.

- Preparers must keep a copy of all returns (recommended) **or** a list of clients and returns prepared (allowed but not recommended). Keep at least 3 years after filing date.

Practitioner Fees §10.27:

- Can't charge "**unconscionable fees**."
- Can't charge **contingent fees** (based on taxes saved or a specific result).
 - **Allowed:** Representation during an audit ("reexamination"), during the audit of an amended return filed within **120** days of the TP receiving a written IRS notice of the original return, services for dealing with an IRS penalty/interest charge, or judicial proceedings.
 - (Ridgely v Lew court case in 2014: IRS lost, so for now the IRS probably can't enforce the restriction on contingent fees, but wasn't a supreme court case so could be challenged. Consider contingent fees to still be not allowed when answering questions for the EA exam.)

Advertising Restrictions §10.30

- Can't be misleading, deceptive, etc.
- EAs can't use term "**certified**", or imply **IRS employment**. Allowed: "enrolled to represent taxpayers before the Internal Revenue Service," "enrolled to practice before the Internal Revenue Service," and "admitted to practice before the Internal Revenue Service."
- **Solicitation Restrictions:** Can't violate federal/state law or other rules. Can't re-contact anyone who asked not to be solicited.
- **Mail Advertising:** Must be clearly labeled as advertising, source of information about the recipient must be identified.
- **Keep a copy:** Mail/e-mail/TV/radio: Must keep a copy of the ad for at least **36** months.
- **Fee Information:** If publishing a fee schedule, must adhere to it for at least **30** days after publishing it. Can be fixed fees for services, hourly rate, range of fees, or initial consult fee.
- Can't use **IRS logo/insignia** in ads except the IRS e-file logo (if authorized provider). Can use the new EA logo (new one without the eagle head).

Negotiation of Taxpayer Refund Checks §10.31

- Can't endorse/cash a refund check issued to the TP or redirecting by any method.
- Can't use Form 8888 - Allocation of Refund to enter own bank info to get a fee.
- Applies to any practitioner, not just the tax preparer.

Other Duties and Prohibited:

- **No Delay Tactics Allowed §10.23:** Must not unreasonably delay the prompt disposition of any matter before the IRS.
- **No Employment of Disbarred or Suspended Persons §10.24:** Even if temporary suspension (or an EA etc.).
- **Practice by Former Government Employees §10.25:** Gov employee/associates can't represent/assist a TP on same matters after leaving the position or if a violation of US law.
- **Performance as a Notary §10.26:** Can't notarize documents if they have an interest in the document/matter (if they did tax work on it).

Signature Requirements:

- **Preparer Signature / PTIN:** Must sign the return (e-sign, typed, stamp, etc.) under penalty of perjury, and fill out the preparer info, including PTIN before giving the return to the TP. Only one primary preparer can sign it.
- **TP signature:** Must sign, affirming accuracy under penalty of perjury. Paper return requires a wet signature.

Requirements for Written Advice §10.37

- Base it on reasonable factual/legal assumptions, consider all relevant facts, relate applicable law.
- Don't rely on unreasonable info from the TP.
- "Audit lottery": Don't say it's ok to do something questionable because they probably won't get audited.

Standards for Tax Returns and Documents §10.34

- Preparers **must not willfully sign a return that:**
 - Lacks a reasonable basis.
 - Is an unreasonable position (see IRC §6694(a) (2)).
 - Is a willful attempt to understate tax or reckless/intentional disregard of rules/regulations.
- **Tax Position Definitions:**
 - **More likely than not:** > 50% likelihood it would be upheld if IRS challenged.
 - **Substantial authority:** (about 40%-50% likelihood) Authoritative sources support it.
 - **Reasonable basis:** (about > 25% likelihood) Minimum standard, not frivolous, somewhat likely to be sustained. Only if disclosing the position on the return and it's not frivolous.
 - **Form 8275 - Disclosure Statement:** To disclose positions that are questionable or unusual, but still has a reasonable basis. Can't be used to avoid penalties related to negligence, disregard of regulations, or understatement on a tax shelter.
 - **Form 8275-R - Regulation Disclosure Statement:** (rare) To disclose a position that is contrary to Treasury regulations, so it will be likely litigated in court.
 - **Unreasonable position:** Without substantial authority, or an undisclosed position without a reasonable basis.
 - **Frivolous position:** (0%) No reasonable basis. Practitioner must not sign.

Advising Clients on Potential Penalties: Must tell client if there are likely penalties that may result from taking a position on a return.

Reliance on Information from Clients: Not required to verify information, but can't ignore contrary information/knowledge, and must make reasonable inquiries if the information appears incorrect.

Reporting Requirements for Tax Shelter Activities

- Tax shelter activities (a "listed transaction") that have potential for tax avoidance/evasion.
- **Form 8886, Reportable Transaction Disclosure:** For each reportable tax shelter transaction.
- **Penalties:** In addition to 30% understatement of tx, civil penalty of 75%, possibly criminal penalties. Can happen even with disclosure.
- IRS will find promoters and get their list of clients to audit.

Firm Compliance Procedures §10.36

- Tax firm owner must ensure all members/associates/employees comply with Circular 230.
- Subject to sanctions if they know other members have a pattern of noncompliance and fail to take action.

Form 8867 Paid Preparer's Due Diligence Checklist

- Applies to: **EITC, CTC/ACTC/ODC, AOTC/LCL, HOH** filing.
- Requirements:
 - **Form 8867 Paid Preparer's Due Diligence Checklist:** For each credit, each year. Specify documents used, if any.
 - Must ask questions and document the answers.
 - **Compute the Credits on the Required Worksheets:** Keep worksheets even if not submitted (the software generates them).
 - **Apply the Knowledge Requirement:** Preparer must know the law, apply common sense, recognize obvious fraud or contradictions, not know any information is incorrect. Ask questions and document answers.
 - **Recordkeeping Compliance Requirements:** Form 8867, applicable worksheets, any documents or written proof used, record of how/when/from whom information was obtained. Keep records for **3** years.
- **Preparer penalties:** Employers of tax preparers can also be penalized. \$560 per failure (per credit, can be multiple per return).
- **TP penalties:** Must pay back credit with interest, may need to file form 8862 to Claim Credits after Disallowance the next year. If reckless/intentional disregard of the rules: can't claim the credit for the next **2** years. Or **10** year ban if fraud.
- **Proof** of child, relationship, etc:
 - Birth certificate, SS card, etc: **Not required, but if using evidence, must keep a copy.**
 - SS card "NOT VALID FOR EMPLOYMENT" - Not valid for work. "VALID FOR WORK ONLY WITH INS AUTHORIZATION" - Valid for work only with a green card.

Record Keeping

- **Misc supporting documents:** Not specific requirements, but keep any documents used. Expense amounts can't just be estimates.
 - Financial documents: Bank statements, brokerage, receipts.
 - Legal: Birth certs, divorce decrees.
 - Business entity: Partnership agreement, corporate bylaws/minutes.
 - Expense records: Mileage logs, receipts, charitable receipts. Especially for travel expenses.

Statute of Limitations for Records Retention:

- **IRS assessment of tax owed:** 3 years from date was due or filed (whichever is later). Or **6** years if the TP omitted > 25% of their gross income. Or no limit if fraud or no return filed.
- **Filing a claim for credit/refund:** (by filing the return or amend the return) **3** years from date the original due date of the return (or the date filed if it was filed on extension), or **2** years from the date the tax was paid (whichever is later).
 - **Worthless securities claim:** (special exception) 7 years.
- **Property records:** Must keep records related to the basis until after the property is sold + statute of limitations (see above).
- **Employment Tax Records:** Payroll / employment tax records (IDs, wage info, etc.) for **4+** years after the tax becomes due or is paid, whichever is later.

Penalties

Penalty for Substantial Understatement: Understatement is \$5000+ **and** > 10% (or 5% if it's a 199A deduction claim) of the tax owed.

Penalty for Valuation Misstatement: (such as for a charitable donation)

- **"Substantial"** §6662(e): Overstated by 150%+ resulting in \$5000 tax underpayment (\$10,000 for C corps) = penalty is 20% of tax underpayment.
- **"Gross"** §6662(h): Overstated by 200%+ resulting in \$5000 tax underpayment (\$10,000 for C corps) = penalty is 40% of tax underpayment

Fraud: Proven to be deliberate/intentional. Penalty is 75% of the tax understatement. May not apply to other spouse of a joint return if only related to one spouse.

- Filing a false return, hiding/omitting assets/income, false deductions, second set of books, covering up source of receipts.

Frivolous Tax Return Penalty or Alteration of the Jurat (§6702): Penalty of \$5000, plus failure-to-file/pay penalty, etc. Just putting zeros on everything, tax conspiracy theory nonsense, etc.

- \$25,000 penalty for making the frivolous argument in US tax court.

Trust Fund Recovery Penalty (TFRP) (§6672): Employer withheld FICA not remitted. 100% of the amount of unpaid.

Penalties Imposed on Tax Preparers: <https://www.irs.gov/payments/tax-preparer-penalties>

- **Failure to furnish copy to taxpayer, Failure to sign return, Failure to furnish identifying number (PTIN), Failure to retain copy or list of returns, Failure to file correct information returns:** \$55 each, capped at \$28k.
- **Negotiation of check:** (endorsing a check payable to another person) \$560 penalty.
- **Credit due diligence failure:** EITC, CTC/ACTC/ODC, AOTC/LCL, HOH. \$560 penalty.
- **Promoting Abusive Tax Shelters:**
 - **False statements about the tax benefits:** 50% of the gross income the person made for the activity.
 - **Provides a gross valuation overstatement:** 100% of the gross income for the activity, up to \$1000. Per each entity/arrangement.
- **Understatement of Taxpayer's Liability:**
 - **Due to unreasonable positions:** (§6694(a)) \$1000 (or 50% of the preparer fee if greater).
 - **Willful or reckless conduct:** (§6694(b)) \$5000 (or 75% of the preparer fee if greater).
 - **Helping the TP with understatement of Tax Liability:** (§6701) \$1000, or \$10,000 for a corporate return. Per TP, per tax period.
- **Disclosure or Use of Information:** (disclosure after 2019-07-01). \$250/disclosure, up to \$10,000/year. Or if connected to identity theft \$1000/disclosure, up to \$50,000/year.
 - **Knowing or Reckless Disclosure or Use of Information:** (misdemeanor) Up to \$1000 + cost of prosecution, up to 1 year prison.
- **Fraud and False Statements:** (felony) Up to \$100,000 (\$500,000 for a corp) + cost of prosecution, up to 3 years prison.

- **Fraudulent Returns/Statements/Documents:** (misdemeanor) Up to \$10,000 (\$50,000 for a corp, up to 1 year prison).
- **Information Return Penalties, §6723**
 - Form W-2, Form W-2G, Form 1099-MISC, Form 1099-R, and Form 1099-NEC - \$50/return if forgot to file. \$110 > 30 days but before 8/1. After 8/1 \$280. If was intentional \$570.

Office of Professional Responsibility (OPR): Discipline / sanctions.

Jurisdiction:

- Attorneys/CPAs interaction with the IRS
- EAs, enrolled retirement plan agents (ERPAs), and enrolled actuaries.
- Qualified appraisers (for tax matters)
- AFSP certificate holders
- Other licensed and unlicensed individuals who give written advice that has potential for tax avoidance/evasion.
- Any person submitting a power of attorney for tax matters (agreed on form 2848).

Practitioner misconduct handled by OPR:

- While representing a taxpayer
- Practitioner's own tax return
- Giving a false opinion knowingly, recklessly, or through gross incompetence
- Misconduct not directly involving IRS representation (conviction of a non-tax criminal act)

Referrals to OPR:

- **Mandatory:** Promoting abusive tax shelters, aiding understatement of tax, injunction of preparer, injunction for tax shelters / reportable transactions.
- **Discretionary:** Accuracy related, understatement because of an unreasonable position, failure to furnish copy of return, failure to sign, keep a copy/list of returns, frivolous returns.
- **Other** common reasons: Cashing/diverting refund, pattern of misconduct over years, potential conflict of interest situations.
- **TP complaint:** Form 14157 Return Preparer Complain. Can be anonymous.

Disciplinary Sanctions:

- **Reprimand:** Private warning.
- **Censure:** Public reprimand. May place conditions on future representations.
- **Suspension:** 1-60 months.
- **Disbarment:** 5 years minimum. Then can petition for reinstatement.
- **Monetary Penalty:** Can be in addition to the above.

Process:

- **Complaint requirements:** Name the respondent, clear and concise description of the facts, signed by the director of the OPR, type of sanction, duration of suspension (if any), date for practitioner to respond by (at least **30** days).
 - Copies of evidence must be served within **10** days.

- **Delivery:** Certified mail; first-class mail if returned undelivered by certified mail; private delivery service; in person; or by leaving the complaint at the office of the practitioner. Not email, phone, etc.
- **Practitioner response:** Can admit, deny, or state not enough info to know. Can't deny a material allegation if they know it to be true. No response is admission of guilt -> sanctions imposed without a hearing.
- **Hearing:** Administrative law judge decides (not OPR). Parties can use attorneys.
 - For suspension/disbarment the OPR must give "clear and convincing evidence" that practitioner willfully violated provisions.
 - **180 days** for the judge to decide.
- **Appeal:** Either party can appeal the judge's decision with the Treasury Appellate Authority within **30 days**. -> then "Final Agency Decision".
 - U.S. district court: Practitioner can contest the Final Agency Decision in a US district court. May win only if decision judged to be arbitrary/capricious, contrary to law, or an abuse of discretion.
- **Reinstatement:** If disbarred, may petition for reinstatement after **5 years**. OPR may reinstate if determine their conduct not likely to be in violation of regulations and in public interest.

Prohibited Actions during Suspension or Disbarment:

- Can't **practice before the IRS** except to represent self/family.
- Prepare/**file documents** with the IRS.
 - **Except tax returns** for compensation (Loving case).
- Render **written advice** regarding any entity/transaction/plan/arrangement with the potential for tax avoidance/evasion.
- **Represent** a client at conferences/hearings/meetings.
- **Execute** waivers, consents, or closing agreements.
- **Receive** a TP's refund check or sign a tax return on behalf of a TP.
- File **powers of attorney** with the IRS.
- **Accept assistance** from another person (or request assistance) or **assist another person** (or offer assistance) if the assistance relates to a matter constituting practice before the IRS. (Can't be hired to work for a tax practice at all.)
- **State/imply** that they are eligible to practice before the IRS.

But can still:

- Represent **self/family**.
- Prepare **returns** for clients for compensation (due to Loving case).
- Act as a **trustee/fiduciary**.
- Appear as a **witness** for a TP.
- **Furnish information** at the request of the IRS
- **Receive IRS information** from a valid tax information authorization.

Tax Refund

- **Apply to next year's estimated tax**
- **Direct deposit:** Savings/checking/retirement accounts (US banks only). Must be in the TP's name. Max **3** deposits into a single bank account. Preparer must accept any eligible financial institution and can't charge an extra fee for direct deposit. Preparer must advise TP that the direct deposit info can't be changed once the return is filed (verify each year).
- **Paper check**

- **Split:** among the two options above or up to 3 different account
- **US I Savings Bonds:** Up to **\$5000** (\$50 increments).

Tax Payment

Can pay anytime until the due date of the return (before/after ok).

- **Direct debit:** Enter bank info on the tax return. Risky to the preparer if they make a mistake.
- **Credit card, debit card, or digital wallet:** (added fee) Online, phone, or mobile device through an authorized payment processor. The processor charges a fee.
- **Personal check, cashier's check, money order**
- **Installment agreement:** IRS Direct Debit Installment Agreement (DDIA) when a TP authorizes monthly payments from their bank.
- **Electronic Federal Tax Payment System (EFTPS):** Required for businesses, individuals can use it but it's more clunky than Direct Pay. Can schedule payments in advance (businesses **120** days, individuals **365** days).
- **Electronic funds withdrawal (EFW):** Withdrawal handled by the tax software.
- **Federal Tax Application (same-day wire transfer):** Useful if the TP has a foreign bank (foreign bank must have a relationship with a US bank).
- **Direct Pay:** (easiest/best option for the TP) IRS website payment from a bank account. Doesn't require signups.
- **Cash:** IRS-approved retail stores (up to **\$500**).

Payment plans:

- **Short Term Payment Plan:** No fee, must be paid within 180 days. Individual TP only. No application, call to request or use website. Pay using Direct Pay, EFTPS, or check etc.
- **Installment Agreements (long term payment plan):** Direct debit from bank account, or Direct Pay, EFTPS, check, etc. Individuals or businesses. TP must file all required tax returns. Must wait for returns to process and tax to be assessed. IRS charges a fee (can be waived for low income).
 - **Form 9465 Installment Agreement Request**, or can apply on the website (cheaper).
 - **Guaranteed approval if:** Owe \$10k or less, timely filed all returns and paid taxes previous 5 years, IRS determines the TP can't pay the tax owed, TP agrees to pay within 3 years, TP has not done an installment agreement in past 5 years. May still get approved otherwise.
 - Automatic 30 day notice if the TP misses a payment. Reinstatement fee charged if goes to default.
- **Extension of Time for Payment (Form 1127):** Application for Extension of Time for Payment of Tax Due to Hardship.

IRS Collections

- Start of collections process: IRS sends a bill that must be paid within 30 days (with penalties/interest).
- **Collection Statute Expiration Date (CSED):** 10 years from the start of collections (when the return is filed). No limit if the return was never filed.
 - Extended (suspended): While considering an installment agreement or an offer in compromise, when the TP requests a collection due process (CDP), while the TP is living outside the US, during a pending bankruptcy proceeding (plus additional **6** months added).

Collections methods:

- Applying a state income tax refund to the federal balance due.
- **Automated Substitute for Return Program (ASFR / SFR):** Substitute for return never filed for many years. Can be replaced by filing a real return.
- **Federal Tax Lien:** For > \$10k tax debt. Property secured to cover tax debt. Lien for the amount of the debt. Applies to all TP property (cars, real estate, accounts receivable).
 - Only after: IRS assesses the TP's liability (so it can't be pending or appealing), IRS sends a notice/demand, and the TP neglects to pay.
- **IRS seizure (Notice of Levy):** Attach a taxpayer's assets, such as **wages, pension benefits, annuities, SS benefits, retirement income.**
 - **Won't if:** Pending installment agreement, pending appeal, pending Innocent Spouse, consideration of an offer in compromise, during bankruptcy (unless the court authorizes it), < \$5k for seizure of real property, or if severe economic hardship (temporary).
 - **Exempt:** Clothes, school books, fuel, food, furniture, personal effects, personal weapons, livestock (limited), books/tools for a business (limited), undelivered mail, unemployment benefits, worker's comp, some annuity/pension payments (if payable by the military or Railroad Retirement Act), child support, certain public assistance (SSI for the aged/blind/disabled).
- **IRS Summons:** (rare) To request records/documents (must be documents that exist) to ascertain correctness of a return, etc.
- Appeal rights
 - **Collection Due Process Hearings (CDP):** Form 12153 Request for a Collection Due Process or Equivalent Hearing. After the IRS final notice of intent to levy or lien. Can still appeal to the tax court if the TP doesn't like the outcome.
 - **Collection Appeals Program (CAP):** Form 9423, Collection Appeal Request. Faster process, and can apply before getting a levy/lien letter, but the TP can't appeal the decision.
- **Collection Financial Standards:** Method to evaluate the TP's ability to pay based on income/expenses. Used for qualifying for OIC and CNC.
- **Offer in Compromise Program (OIC)**
 - (Form 656) "**Doubt as to collectibility**" (impossible to pay it) or "**exceptional circumstances**" (serious economic hardship). Application fee (may be waived if low income).
 - (Form 656-L) "**Doubt as to liability**". No fee.
 - If rejected, TP may **appeal within 30 days**.
- **"Currently Not Collectible" Status (CNC):** If the TP has no ability to pay. If confirmed, the IRS must stop trying to collect the debt for a period of time.

Bankruptcy

- Filing bankruptcy stops all assessment/collection of tax (good). Collection Statute Expiration Date collections clock is suspended while it's pending (bad).
- **Income tax debt can be discharged only if:** related to a return due at least **3** years before bankruptcy filing, tax return filed at least **2** years before, tax assessment must be at least **240** days old, and TP cannot be guilty of tax evasion and the return can't be fraudulent or frivolous. May not seize a main home without approval of the IRS district director + judicial approval.

Seeking Relief from Joint Liability: Form 8857. Joint spouses are normally jointly responsible (regardless of person at fault, divorce decrees, etc.). Can apply for an exception for relief.

- **Innocent Spouse Relief:** Other spouse made errors on the return (understated the tax), and the innocent spouse knew nothing about it. Can be still married. (IRS usually fights it, may have to go to tax court).
- **Separation of Liability Relief:** Same situation as Innocent Spouse Relief, but additionally the spouses are divorced, or living apart for 12 months, or the other spouse is deceased. Allocates specific amounts to each of the spouses / ex-spouses.
- **Equitable Relief:** May apply when a taxpayer does not qualify for the other two options. Also applies to unpaid tax (not just understatement). Considers the entire scenario, if there was abuse, or poor mental/physical health, etc.
- **Injured Spouse:** Other spouse had their return offset (kept) because of past due tax, child support, overdue student loans, etc. Injured spouse can apply to recoup their share of the tax refund. (Some states don't offer it.) Would have been better to just not file jointly.

Audits ("Examination")

- 1% of total, but more if high income, or returns claiming credits.
- Types:
 - **Correspondence audit:** By mail. Most common, minor issues.
 - **Office audit:** At a nearby IRS field office.
 - **Field examinations:** Auditor goes to the TP's business or home.
- Why selected for audit:
 - **Potentially Abusive/Tax Avoidance Transactions**
 - **Computer Scoring/DIF Score:** Discriminant Inventory Function System (DIF). Secret scoring system.
 - **Information Matching:** Return didn't match known income info, etc.
 - **Related Examinations:** Related to business partners, investors, etc. with issues.
 - **Third-Party Information:** Tips, public records, etc.
- TP Rights:
 - Professional and **courteous** treatment by IRS employees.
 - **Privacy**/confidentiality about tax matters.
 - To know **why** the IRS is asking for information, how the IRS will use it, and what will happen if the requested information is not provided.
 - **Representation**, either oneself or an authorized representative.
 - **Appeal** disagreements, within the IRS and before the courts.
- Information collection:
 - **Form 4564 - Information Document Request (IDR)** - Used by the IRA to request info from the TP. May ask to see books, etc.
 - **Representative:** Can be self (if MFJ, can be either spouse), enrolled practitioner, or certain close family. Probably best if the TP is not present. Practitioner can be representing only once spouse.

- If the TP is uncomfortable during the audit while representing self, the IRS must suspend it until they get representation. Unless the IRS has an administrative summons (rare).
- **Third party contacts:** (Taxpayer First Act of 2019) IRS can contact them without the TP's permission, but IRS must notify the TP first (**45 day notice**). IRS must state time period (up to **1 year**). Doesn't apply to contacting other government agencies, if pending criminal investigation, if would jeopardize collection of tax, may result in reprisal against any person, or the TP authorized the contact.
- Audit determinations:
 - **No Change**
 - **Agreed:** Closing agreement signed, audit is closed. IRS usually won't re-open unless fraud/misrepresentation, or substantial IRS error.
 - **Unagreed:** May request conference with an IRS manager, IRS appeals, US tax court, TP may request fast-track mediation.
 - **30-Day Letter:** Notifies the TP's right to appeal within 30 days, includes a copy of the revenue agent report (RAR) and Pub. 5 Your Appeal Rights. TP can sign the agreement form, or appeal (to IRS Appeals, have to wait for 90 day letter to go to Tax Court).
 - **90-Day Letter (Notice of Deficiency):** 150 days if foreign address. If the TP doesn't respond to the 30 day, or can't reach an agreement with appeals. Sent as certified mail. Final letter before assessment (and then can't appeal). Can go to IRS Appeals *or Tax Court*. Or must pay within 10 days before additional penalties/interest start.
- **Reconsideration:**
 - IRS can do it if the audit assessed additional tax that is unpaid.
 - TP can request it if new information discovered, the TP filed a return to replace a SFR, the TP believes the IRS made a computational/processing error, or the tax remains unpaid or credits denied. Can't if the audit closing agreement was already signed.
- **Repeat Examinations:** If the TP gets audited 3 years in a row for the same issue and audits resolved with "no change" in the past 2 years, TP can request the IRS discontinue the examination (but they may say no).
- **Centralized Partnership Audit Regime (CPAR):** Mandatory if 101+ partners or if any partner is a SMLLC or a bankruptcy estate, otherwise can opt out (on form 1065 Schedule B-2 of a timely filed return). If partnership is audited and tax assessed, the partnership itself is taxed rather than the partners.

Appeal Options

Penalties/interest continue to accrue but won't go to collections.

- **IRS Independent Office of Appeals ("IRS Appeals"):** Can choose it after the 30 or 90 letter. Independent of the rest of the IRS. Alternative to going to tax court. Free, but may be slow. Conference with an appeals officer. Arguments be supported by tax law (not constitutional argument, etc.). Unenrolled preparer can be a witness but can't represent the TP. Enrolled representative must have filed form 2848.
- **US Tax Court:** Can only do it after the 90 day letter. Costs a filing fee (but don't have to pay the tax first). Once it's docketed, the IRS Appeals office will try to resolve it (gets resolved 90% of the time before going to court).

- **Representation:** Can be self ("pro se"), a lawyer, or EA/CPA only if passed exam to the tax court exam (rare).
- **Decisions:**
 - **Regular decision:** First time ruling the on the issue.
 - **Memorandum decision:** The court already ruled on the issue.
- **Jurisdiction:** Notices of deficiency, failure to abate interest, partnership items, admin costs, worker classification, review of collection actions. Not FBAR, foreign financial reporting.
 - **On types of tax:** income, estate, gift, excise tax, re-determine transferee liability, spouse relief, whistleblower awards.
- **Small Tax Case Procedure ("S-case" procedure):** \$50,000 max (total amount for all years, or per quarter for worker classification). Neither side can appeal the decision. Not treated as precedent, not published. Not related to the IRS's "Small Case Request."
- **US Court of Federal Claims or a US District Court:** (rare) Can bypass the IRS Appeals and US Tax Court. TP must pay the tax first and then sue for a refund.

E-file

- **E-file mandate:** e-file required if the firm files > 10 returns/year (1040/1041 forms). Doesn't apply to payroll 940/941 forms. Applies to sum of all preparers in a firm. Preparers can charge extra for e-filing (some states don't allow e-file fees).
 - **Exempt:** Foreign preparers exempt (can't get an EFIN), fiduciaries that file fiduciary returns, form 8944 E-file Hardship Exemption (waiver for all preparer's returns because of economics or disaster).
 - **Form 8948 Explanation for Not e-Filing:** Filed with each paper return if filing with a PTIN as a paid preparer. For reasons above (other than fiduciaries), or client is member of recognized religious group that is opposed, or client request to paper file.
- **EFIN application:** US citizen / green card holder, age 18+, meet state/local licensing/bonding requirements. No fee. Fingerprinting if not enrolled preparer. Criminal background check, credit history, tax compliance check. List form types on application. For each office location. Not transferable, even if selling tax business.
- **W-2 requirement:** Can't e-file if didn't receive all W-2s first. (Or form 4852 if impossible to get the forms from the employer, or if the TP lost them wait til around June and request TP's wage transcripts to get the info.)
- **E-file rejections:** If can't rectify it, must tell the TP within 24 hours. Must give the TP the IRS reject codes. If can't fix, may have to paper file.
 - **Perfection period:** Time to paper file if e-file rejected. 5 calendar days for personal returns, 10 days for business returns. Include: explanation of why, copy of rejection notification, brief history of actions taken. Write "REJECTED ELECTRONIC RETURN-(date)" (date of the first e-file rejection) on the top of the first page. Late payment penalties still apply.
- **Electronic Return Originators (ERO):** Person who can e-file. Someone else could prepare the return.
 - **Requirements:** Timely submit returns, submit supporting paper docs, provide copy to the TP, retain record of returns filed (and make available to the IRS on request), work with the TP to correct rejected return, enter the PTIN info, recognize fraud/abuse.
 - **Advertising:** Can't promise a time frame for refunds. Can't use the IRS logos/seals. Can use the "Authorized IRS e-file Provider" logo. Must keep copy of ads for at least 36 months.
- **E-signature:**

- Types:
 - **Self-Select PIN Method:** (less common) TP provides prior year AGI for verification, TP enters their own PIN using keystrokes after reviewing the return. Or TP can authorize the ERO to enter the PIN on their behalf (with a signed signature authorization form).
 - **Practitioner PIN Method:** (more common) Have the TP sign Form 8879 - e-file Signature Authorization. Preparer enters a pin (e.g. the TP's zip code).
- **Signing form 8879 Authorization:** Not submitted, but must be retained for 3 years. AGI can't differ by more than \$50, and total tax by \$14.
 - **Handwritten signature:** Can be in person, mailed, fax, or scanned and emailed/uploaded.
 - **E-signature:**
 - **In-person:** (in-person e-signing) Inspect valid government picture ID, and record the name, SS #, address, and DOB. Optional credit check. Must verify every year.
 - **Remote transactions:** Verify name, SS #, address, DOB, and other info on record are consistent with record checks with credit bureau etc. (KBA). Must verify every year.

Paper Returns

- TP can paper file their self-prepared returns. If preparer prepared, requires form **8948 - Preparer Explanation for Not Filing Electronically**.
- **Can't e-file:**
 - **Older** amended/original returns.
 - Individual returns with **fiscal** tax year (rare)
 - Forms that can't be e-filed.
 - Rare/unusual processing conditions.
 - Estate tax returns (**form 706**).
 - Deceased TP with SS# rejected because it was turned off.

Safeguarding Taxpayer Data

- **Written Information Security Plan (WISP):** required. See example in Pub 5708.
- **IP PIN:** IRS will send to the TP automatically if they had identity theft, or the TP can request one. Sent on a CP01N notice, or can get from the IRS website. On a joint return, only the first (primary) person needs to use their pin. Can paper file without the pin, but may be delayed for the IRS to validate their ID.
- Identity Theft: Using someone's SSN, etc.
- **Spoofed email accounts:** Fake emails made to look like they come from a legit source.
- **Social engineering attack:** A person pretends to be someone they aren't to get info from someone.
- **Stolen Identity Refund Fraud (SIRF):** Criminal filing tax returns with someone else's info to get their refund.
 - Tax preparers can ask for picture ID, SS cards, etc. Best to file letter early so someone else can't claim the refund.