

Ethics is basically common sense. It is honesty and confidentiality. Tax preparers must not knowingly enter false or incomplete information on a client's tax return, must ask questions or request documentation if they have a specific reason to suspect that a client is giving them false or incomplete information on income, deductions or credits claimed on a tax return, and must not discuss or share the personal financial information of a client with a third-party without the express consent of the client. There, I just covered the topic of ethics in about 20 seconds.

Ethics is constant. The basic rules of honesty and confidentiality do not change from year to year. Specific required and prohibited actions of paid tax preparers may change, or new requirements and prohibitions may be added, as a result of IRS regulations and the whims of a misguided Congress looking for the quickest and least expensive, to the government, fix for an issue – but that is law and not ethics. Changes to such requirements and prohibitions can be included as needed in the "what's new" update class or session.

What are my ethical responsibilities and obligations as a paid tax preparer? My answer is taken from the detailed explanation in my book "So You Want To Be A Tax Preparer" (for more information on this book you can go to <http://robertdfiach.blogspot.com/p/so-you-want-to-be-tax-preparer.html>).

It is my responsibility and obligation to report all taxable income and claim all allowable deductions and credits, as identified in the Internal Revenue Code, of which I have knowledge, in a manner that is prescribed or allowed by the Tax Code or IRS and state rules and regulations. I must prepare an honest and accurate return, based on the information provided. I must not knowingly prepare a fraudulent return.

While the Internal Revenue Service considers the tax preparation community as a "stakeholder", as a tax preparer I am not in any way a representative or agent of the Internal Revenue Service or any state tax authority. My only obligations and responsibilities to the IRS, or a state tax agency, are to prepare an accurate and honest return, based on all the information I have been given by the client, and to comply with the standards required of all tax preparers, unenrolled and otherwise, outlined in IRS Publication 470 and IRS Circular 230, and any corresponding state publications or regulations.

As a paid tax professional I sign each return that I prepare declaring, under penalty of perjury, that the return is "based on all information of which preparer has any knowledge".

My obligation and responsibility to my client is to calculate the tax liability so that I take advantage of all deductions, credits and "loopholes" available in federal, state and local tax law so that, based on the individual facts and circumstances as presented to me, and within long-term considerations, the client pays the absolute least amount of combined federal, state and local income tax possible.

In the case of a "grey" area of the Tax Code, an item of income, deduction or credit which is open to interpretation, I generally interpret the law in such a way to provide the maximum tax benefit to my client.

In situations where the applicable federal or state tax law is "unsettled" or where the application of the law to the facts at hand is "uncertain" and open to interpretation, I am obligated to explain the possible effects of the various alternatives to my client. It is the client who must make the final decision about the position to be taken.

When it comes to approaching the preparation of tax returns, I assume that, unless I have direct personal knowledge to the contrary, the client is telling me the truth. It is not up to me to verify that they are telling the truth. As I discussed last issue, it is not the responsibility of a paid tax preparer to personally verify to the penny the accuracy of each and every entry on a tax return.

That is the responsibility of the Internal Revenue Service, and is done via internal document matching and audit.

If a client tells me, or indicates on a worksheet, that his gross income from a part-time sideline business was \$3,525, or that his total medical expenses were \$6,257, or that he drove 4,206 miles for business, I will believe this to be true unless I have direct personal knowledge to the contrary. It is not my responsibility to personally verify all the numbers or statements given to me by a client. I have no obligation, legal or ethical, to audit a client's return. This is up to the IRS, if they so choose. I am simply preparing the return, to the best of my ability, based on information supplied by the client.

While I am not obligated or required to personally verify all numbers entered on the 1040, I am required to do "due diligence" when it comes to information provided by the client. I must –

- evaluate information received from clients,
- apply a consistency and reasonableness standard to the information, and
- ask additional questions if the information appears incorrect, inconsistent or incomplete.

The IRS and the again lazy Congress have forced tax preparers to be Social Workers by erroneously requiring additional excessive "due diligence" requirements for clients who claim the Earned Income Credit, the Child Tax Credit and Other Dependent Credit, the American Opportunity Credit, and Head of Household status, in effect forcing low income individuals to pay to apply for government benefits.

It is my obligation and responsibility to tell clients about the IRS standards and requirements for documenting income, deductions and credits. But that is where it ends.

I will, for example, tell a client that "you can only deduct cash contributions to a church or charity if you can provide a cancelled check, a credit card receipt, a 'bank record', or a written receipt from the charity to document the contribution" (as I do on my Charitable Contributions Worksheet), but I do not need to see each and every piece of documentation. I just need, and ask for on my worksheet, a total amount for the year.

I will also tell a client who uses his car for business, now limited to clients with a self-employed activity, that he should keep a travel diary to record the name of client, location, business purpose and number of round-trip miles driven on a daily basis. But I do not need to actually see the diary or personally add up all the individual mileage entries in the diary.

And I will tell a client that only unreimbursed "out of pocket" medical expenses are deductible, less any insurance or employer plan reimbursements. But I do not need (nor do I want) to see each and every medical bill and all statements from insurance companies and flexible spending accounts to verify that the expense was not reimbursed.

What do I mean when I say "unless I have direct personal knowledge to the contrary"?

Let us say that a client has filled out one of my worksheets stating that the rent collected for the year on the upstairs apartment of a two-family house is \$9,600 – or \$800 per month. But, when talking to the client he mentions to me that the rent he gets from the tenant is actually \$1,050 per month. I now have "direct personal knowledge to the contrary".

Or perhaps I have a client who does occasional carpentry on the side and gives me a sheet of paper listing his income and expenses that shows \$3,500 as total gross receipts for the year. However, in July of the tax year in question I had paid the client \$4,000 to install new kitchen

cabinets in my home. I have "direct personal knowledge to the contrary" that the client's gross income for the year was at least \$4,000. To be fair, the client may have split the work with another part-time carpenter, giving him \$1,000 for his labor, and is claiming on his worksheet only his share of the fee and not deducting out the \$1,000 paid to the other carpenter in his list of itemized expenses – but I must ask the client to find this out.

And a third possibility – I have a client who each year only reports, to me and to the IRS and the state, income from his W-2 job and some interest and dividends from 1099s. I have another client who had work done on his rental property during the year. Included in the cancelled checks for the repairs that this client shows me is one to the first client for \$750 for painting the apartment. The second client tells me that the first client is a self-employed painter on the week-ends. I now have "direct personal knowledge to the contrary" that the client has additional, unreported, taxable income.

In each of these cases I must tell the client that I have "direct personal knowledge to the contrary" and that if he or she wants me to prepare his tax return, I must report the correct amount of income.

If a client says or indicates something that does not make sense, or does not seem reasonable, I must ask questions. If a new client comes in who drives the latest model Mercedes Benz, is wearing a \$500 suit and a \$5,000 Rolex, and lives in a \$1 Million house, but claims only \$50,000 in w-2 income for the year, I must dig deeper.

As for the issue of "confidentiality" or "privacy" this is limited to the financial and personal information provided by a client in the course of preparing a tax return. During the annual redundant ethics preaching that I have sat through over the years, when I was actually listening and not day dreaming or reading the paper, I have found that much of what the instructors teach regarding privacy is totally ridiculous.

What am I talking about?

Say I was talking to a friend, who was also a client, in a public place and another client, let's call him George, who my friend coincidentally also knows, happened along, saying hello to us in passing. If my friend asked me, "How do you know George," I would normally think nothing of replying, "I have been doing his taxes for years".

But by doing so, I am told, I would be seriously violating "privacy" rules!

The issue of privacy applies to what the client tells me about his personal finances, and not the fact that he is a client or friend. Obviously, I am not allowed to discuss the details of George's Form 1040, or any other financial or personal information I was told in confidence in the course of preparing his return, with my friend. But not being able to simply mention that he is also a client is pure nonsense.

If a friend or fellow client asks the question in casual conversation, I do not see a problem. If a stranger comes up to me out of the blue and asks if and how I know a client I will be on my guard and ask why they want to know. And if a stranger, to me, or only a casual acquaintance, comes up to the two of us and asks how we know each other I will let the client with me respond first and take my lead from him or her.

Many tax professionals have "waiting rooms", which are often crowded during the tax season. We do not segregate clients in individual cubicles so they do not see each other, or ask them to wear masks while sitting in the waiting room. Often in the past, when I had an office open to the public, I had a client enter my waiting area and be surprised to see a friend or co-worker sitting there. Nobody ever ran out of the office in fear because they were seen there.

I am certainly not going to take out a full-page ad with my client list in the local newspaper. But the fact that a person is my client is not a state secret.

It is different with a doctor, whose specialty may "betray" personal medical information that the client does not want known. And perhaps, for the same reason, with certain lawyers, such as the divorce attorney. But there is nothing revealing in the mere fact that a person uses a professional to prepare his tax return, other than the intelligence of that person.

So, what do you think? I am interested in hearing your thoughts on this topic, specifically the area of "privacy".

TAXPRO BUZZ (continued from Page 1)

<https://www.accountingtoday.com/news/irs-revives-form-1099-nec-for-nonemployee-compensation>

Speaking of draft tax forms, ACCOUNTING TODAY reports on another one in "IRS revives Form 1099-NEC for nonemployee compensation." This one is for tax year 2020, and its return is apparently a result of the PATH Act of 2015. Why this is needed is a mystery – the information was already part of the Form 1099-MISC.

To be honest, I do not remember the 1099-NEC form.

<https://www.forbes.com/sites/kellyphillipserb/2019/07/23/irs-issues-guidance-on-preventive-care-and-health-savings-account-plans/#4663e8924344>

Returning to our favorite "TaxGirl", Kelly also recently reported "IRS Issues Guidance On Preventive Care And Health Savings Account Plans" –

"The Internal Revenue Service (IRS) has added treatments for a range of chronic conditions to the list of preventive care benefits that may be provided by a high-deductible health plan (HDHP) in tandem with a health savings account (HSA)."

<https://taxfoundation.org/growing-percentage-americans-zero-income-tax-liability>

The TAX FOUNDATION explains what is no surprise to me in "A Growing Percentage of Americans Have Zero Income Tax Liability".

". . .the percentage of nonpayers (taxpayers who owe zero income taxes after taking their credits and deductions) from 1950 to 2016. Despite occasional dips, the trend has been an increase in the percentage of nonpayers, from 28 percent in 1950 to 33.4 percent in 2016."

"As policymakers debate narrow taxes on small groups of individuals, they should keep in mind that the income tax base itself has been narrowing for decades, as more and more people pay no income taxes. Tax credits continue to shrink the tax base and raise the percentage of nonpayers. If policymakers want to increase revenue significantly, they will have to look to broad-based taxes that fall on everyone, rather than targeted taxes on select groups."

Many taxpayers actually "make a profit" by filing a Form 1040 – receiving a refund of more than the amount, if any, that they paid in. And often fraudulently. This is due to the various "refundable" tax credits available.

I have always opposed using the Form 1040 to distribute government welfare and other government program benefits, especially via refundable credits. And I believe every American

who is no longer a full-time high school or college student should pay some income tax – even if only \$100. A true “minimum tax”.

What do you think?

<http://robertdfiach.blogspot.com/p/blog-page.html>

The updating of the “Tax Professional Forms, Schedules and Worksheets” compilation that I discussed last issue has now been completed and is available for sale to fellow tax pros. Click on the above link to learn more about this offering.

<https://www.dinesentax.com/12816/trends-i-am-noticing-in-the-tax-field>

Enrolled Agent Jason Dinesen of DINESEN TAX TIMES has posted after a 6-month absence. As he explains his post involves “a practice-management topic” and discusses “Trends I Am Noticing in the Tax Field”.

<https://www.accountingtoday.com/news/trump-signs-irs-reform-bill-into-law?brief=00000158-5504-dc42-a1fe-55d7045f0000>

ACCOUNTING TODAY tells us “Trump signs IRS reform bill into law”. The law = the “Taxpayer First Act”.

Thankfully –

“However, lawmakers eliminated a controversial provision that would have codified the Free File Alliance into law after a controversy erupted over whether it would prevent the IRS from developing free tax preparation software of its own.”

I wish the IRS would create a way for taxpayers to submit their 1040 direct to the IRS online free of charge, without having to purchase a commercial tax preparation software program, like NJ does with its NJWebFile program.

As always, I am interested in your thoughts on what I discussed in this issue. Email me at rdftaxpro@yahoo.com with “THE TAX PROFESSIONAL NEWSLETTER” in the subject line.

I have been disappointed with the total lack of response to this latest incarnation of THE TAX PROFESSIONAL. Nobody has provided any feedback or added to the discussion of the important issues I have presented here. If fellow tax pros do not find this free newsletter of value, I am no longer going to waste my time on it. The future of THE TAX PROFESSIONAL will depend on the response I get to this issue.

*We must never forget that **ABSOLUTELY NOTHING** – no other issue – is more important for the future of America, American democracy, and the world in the 2020 election than removing Trump from the White House, and removing hypocritical Republicans who support and defend Trump from Congress.*

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