PassKey Learning Systems

EA Review Part 3: Representation

May 1, 2025 - February 28, 2026

Testing Cycle

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This study guide is designed for exam candidates who will take their exams in the May 1, 2025 to February 28, 2026 testing cycle.

Note: Prometric will NOT TEST on any legislation or court decisions passed after December 31, 2024. For exams taken between May 1, 2025 to February 28, 2026, all references on the examination are to the Internal Revenue Code, forms and publications, as amended through December 31, 2024. Also, unless otherwise stated, all questions relate to the calendar year 2024. Questions that contain the term 'current tax year' refer to calendar year 2024.

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Recent Praise for the PassKey EA Review Series

(Real customers, real names, public testimonials)

Fantastic textbooks and video resources.
Vino Joseph Philip
Comprehensive and accurate video lessons are available online, and testing is also available for each course. I passed all three exams on the first attempt after using Passkey's resources.

Perfect review book!
A. Bergman
The [PassKey] EA Review is great! Goes into detail and explains why. When you do the practice test, it actually tells you details of the answer for learning and retaining! Definitely recommend!

Easy to read and understand
Chrishun Etter
This book is good, especially if you have a hard time paying attention to a computer screen all the time. I would recommend this in addition to the subscription because the videos are very helpful as well.

Helped me to pass faster
Mohamed Helemish
I highly recommend Passkey if you are looking for something simple, and easy to understand, and if you want a good reference for your future career in taxes. I passed the exam with confidence and I used it with the three parts.

I highly recommend these materials.
Tosha H. Knelangeon
Using only the [PassKey] study guide and the workbook, I passed all three EA exams on my first try. I highly recommend these materials. As long as you put in the time to read and study all the information provided, you should be well-prepared.

I passed on the first try.
Jake Bavaro
I recently passed the first part of the EA exam using just the textbook and a separate practice test workbook. The textbook is very easy to read and understand. Although I have a background in accounting and tax, someone with little or no knowledge of either should be able to grasp all of the various topics covered in the book. I really do believe that it is a superior preparation resource.

I passed all three parts the first time taking them.
Sheryl Reinecke
I passed all three parts the first time. I read each chapter and the review quiz at the end of each chapter. Before taking the real exam, I did the practice exams in the additional workbook. I feel the material adequately prepared me for success in passing the exam.

You can pass.
Vishnu Kali Osirion
I really rushed studying for this section. These authors make tax law relevant to your day-to-day experiences and understandable. You can pass the exam with just this as a resource. I do recommend purchasing the workbook as well, just for question exposure. The questions in the book and in the workbook are pretty indicative of what's on the exam. This is a must-buy. Cheers.

Absolute Best Purchase
Sharlene D.
This book was definitely worth the purchase. The layout was great, especially the examples! Reading the book from front to back allowed me to pass [Part 2]. I also recommend purchasing the workbook or subscribing to the material on their website for this section.

Excellent explanations!
Janet Briggs
The best thing about these books is that each answer has a comprehensive explanation about why the answer is correct. I passed all three EA exams on the first attempt.

PassKey was the only study aid that I used
Stephen J Woodard, CFP, CLU, ChFC
The [PassKey] guides were an invaluable resource. They were concise and covered the subject matter succinctly with spot-on end-of-chapter questions that were very similar to what I encountered on the exams.

Amazing!
Sopio Svanishvilion
PassKey helped me pass all three parts of the Enrolled Agent exam. They are a "must-have" if you want to pass your EA exams.

I passed all three with Passkey.
Swathi B.R.
I went through the online membership, read the whole book, solved all the questions, and passed the EA exam on my first attempt. For all three [parts], I referred to Passkey EA Review. Wonderful books.

Passed all 3 Parts!
Kowani Collins
Thank you so much for providing this resource! I have passed all 3 parts of the SEE exam. PassKey allowed me to study on my own time and take the exam with confidence. Thank you for providing such thorough and easy-to-follow resources!

Introduction

Congratulations on taking the first step toward becoming an enrolled agent, a widely respected professional tax designation. The Internal Revenue Service licenses enrolled agents, known as EAs, after candidates pass a competency exam testing their knowledge of federal tax law. As an enrolled agent, you will have the same representation rights as a CPA, with the ability to represent taxpayers in IRS audits and appeals—an EA's rights are unlimited before all levels and offices of the IRS.

The PassKey study guide series is designed to help you study for the EA exam, which is formally called the *IRS Special Enrollment Examination* or "*SEE.*"

EA Exam Basics

The EA exam consists of three parts, which candidates may schedule separately and take in any order they wish. The computerized exam covers all aspects of federal tax law, with Part 1 testing the taxation of individuals; Part 2 testing the taxation of businesses, and Part 3 testing representation, practice, and procedures.

Each part of the EA exam features 100 multiple-choice questions, requiring no written answers. The exam will include some experimental questions that are not scored. You will not know which questions count toward your score and which do not.

Computerized EA Exam Format
Part 1: Individual Taxation–100 questions
Part 2: Business Taxation–100 questions
Part 3: Representation, Practice, and Procedures–100 questions

You will have 3.5 hours to complete each part of the exam. The actual seat time is four hours, which allows time for a pre-exam tutorial and a post-exam survey. An on-screen timer counts down the amount of time you have to finish. The testing company Prometric exclusively administers the EA exam at thousands of testing centers across the United States and certain other countries. You can find valuable information and register online at ***https://www.prometric.com/IRS***.

Prometric Testing Center Procedures

The testing center is designed to be a secure environment. The following are procedures you will need to follow on test day:

1. Check in about thirty minutes before your appointment time and bring a current, government-issued ID with a photo and signature. If you do not have a valid ID, you will be turned away and will have to pay for a new exam appointment. Prometric will not issue refunds if you forget to bring a proper ID with you.
2. The EA exam is a closed-book test, so you cannot bring any notes or reference materials into the testing room. The center supplies sound-blocking headphones if you want to use them.
3. No food, water, or other beverages are allowed in the testing room.
4. You will be given scratch paper and a pencil to use, which will be collected after the exam.

5. You can use an on-screen calculator during the exam, or Prometric will provide you with a handheld calculator. You cannot bring your own calculator into the examination room.
6. Before entering the testing room, you may be scanned with a metal detector wand.
7. You must sign in and out every time you leave the testing room.
8. You cannot talk or communicate with other test-takers in the exam room. Prometric continuously monitors the testing room via video, physical walk-throughs, and an observation window.

Important Note: Violating any of these procedures may result in the disqualification of your exam. In cases of cheating, the IRS says candidates are subject to consequences that include civil and criminal penalties.

Break Policy: The Special Enrollment Exam (SEE) now includes one scheduled 15-minute break. You may decline the scheduled break and continue testing. If you choose to take the scheduled break, you will leave the testing room, adhering to all security protocols. You can take additional unscheduled breaks; however, the exam clock will continue to count down during any unscheduled break.

Exam-takers who require special accommodations under the Americans with Disabilities Act (ADA) must contact Prometric directly to obtain an accommodation request. The test is administered in English; a language barrier is not considered a disability.

Exam Content

Each year, using questions based on the prior calendar year's tax law, the IRS introduces multiple new versions of each part of the EA exam. If you fail a particular part of the exam and need to retake it, do not expect to see identical questions the next time.

Prometric's website includes broad content outlines for each exam part. When you study, make sure you are familiar with the items listed, which are covered in detail in your PassKey study guides. Questions from older exams are available on the IRS website for review. Be aware that tax laws change yearly, so be familiar with recent updates.

Your PassKey study guides present an overview of all the major areas of federal taxation that enrolled agents typically encounter in their practices and are likely to appear on the exam. Although our guides are designed to be comprehensive, we suggest you also review IRS publications and try to learn as much as possible about tax law in general, so you are well-equipped to take the exam. In addition to this study guide, we highly recommend that all exam candidates read:

- **Publication 17,** *Your Federal Income Tax* (for Part 1 of the exam), and
- **Circular 230,** *Regulations Governing Practice before the Internal Revenue Service* (for Part 3 of the exam)

You may download these publications for free from the IRS website.

Note: Some exam candidates take *Part 3: Representation, Practice, and Procedures* first rather than taking the tests in order, since the material in Part 3 is considered less complicated. However, test-takers should know that several questions pertaining to taxation of *Individuals* (Part 1) and *Businesses* (Part 2) are often included on the Part 3 exam.

Exam Strategy

Each multiple-choice question has four answer choices. There are several different question formats. During the exam, you should read each question thoroughly to understand precisely what is being asked. Be particularly careful when the problem uses language such as “not” or “except.”

Format One–Direct Question
Which of the following entities are required to file Form 709, United States Gift Tax Return?
A. An individual B. An estate or trust C. A corporation D. All of the above
Format Two–Incomplete Sentence
Supplemental wages do not include payments for:
A. Accumulated sick leave B. Nondeductible moving expenses C. Vacation pay D. Travel reimbursements paid at the federal government’s per diem rate
Format Three–All of the Following Except
Five tests must be met for you to claim an exemption for a dependent. Which of the following is *not* a requirement?
A. Citizen or Resident Test B. Member of Household or Relationship Test C. Disability Test D. Joint Return Test

If you are unsure of an answer, you may mark it for review and return to it later. Try to eliminate clearly wrong answers from the four possible choices to narrow your odds of selecting the right answer. But be sure to answer every question, even if you have to guess, because all answers left incomplete will be marked as incorrect. Each question is weighted equally.

There may also be a limited number of questions that have four choices, with three incorrect statements or facts and only one with a correct statement or fact, which you would select as the right answer. With 3.5 hours allotted for each part of the exam, you have about two minutes per question. Try to answer the questions you are sure about quickly, so you can devote more time to those that include calculations or that you are unsure about. Allocate your time wisely. To familiarize yourself with the computerized testing format, you may take a tutorial on the Prometric website. The tutorial illustrates what the test screens look like.

Scoring Methods

The EA exam is not graded on a curve. The IRS determines scaled scores by calculating the number of questions answered correctly from the total number of questions in the exam and converting to a scale that ranges from 40 to 130. The IRS has set the scaled passing score at 105, which corresponds to the minimum level of knowledge deemed acceptable for EAs.

After you finish your exam and submit your answers, you will exit the testing room, and Prometric will send your results to your email, showing whether you passed or failed. Test results are automatically shared with the IRS, so you do not need to submit them yourself. Test scores are confidential and will be revealed only to you and the IRS. If you pass, your printed results will show a passing designation but not your actual score. The printout also will not indicate which specific questions you answered correctly or incorrectly.

If you fail, you will receive diagnostic information to help you know which subject areas to concentrate on when studying to retake the exam:

- Level 1: Area of weakness where additional study is necessary.
- Level 2: Might need additional study.
- Level 3: Clearly demonstrated an understanding of the subject area.

These diagnostic indicators correspond to various sections of each part of the exam. If necessary, you may take each part of the exam up to four times during the current testing window. You will need to re-register with Prometric and pay fees each time you take an exam part. Due to the global pandemic, the IRS extended the two-year carryover period to **three years** for passing all three parts of the exam.

Example: Randall, an EA exam candidate, successfully passed Part 1 on November 15, 2022. Subsequently, he passed Part 2 on February 15, 2023. Randall has until November 15, 2025, to pass the remaining part. Otherwise, he loses credit for Part 1. Randall has until February 15, 2026, to pass all other parts of the examination or he will lose credit for Part 2.

Applying for Enrollment

Once you have passed all three parts of the EA exam, you can apply to become an enrolled agent. The process includes an IRS review of your tax compliance history. Failure to file or pay personal income taxes in a timely manner can be grounds for denial of enrollment.

The IRS Return Preparer Office will review the circumstances of each case and make determinations on an individual basis. You may not practice as an EA until the IRS approves your application and issues you an enrollment card, a process that takes up to 60 days or more.

Successfully passing the EA exam can launch you into a fulfilling and lucrative new career. The exam requires intense preparation and diligence, but with the help of PassKey's comprehensive *EA Review*, you will have the tools you need to learn how to become an enrolled agent.

We wish you much success!

Ten Steps for the EA Exam

STEP 1: Learn

Learn more about the enrolled agent designation, and explore the career opportunities that await you after passing your EA exam. In addition to preparing income tax returns for clients, EAs can represent individuals and businesses before the IRS, just as attorneys and CPAs do. A college degree or professional tax background is not required to take the EA exam. Many people who use the PassKey study guides have had no prior experience preparing tax returns, but go on to rewarding new professional careers.

STEP 2: Gather Information

Gather more information before you launch into your studies. You will find valuable information about the exam itself on the Prometric testing website at www.prometric.com/IRS. Be sure to download the official Candidate Information Bulletin, which takes you step-by-step through the registration and testing process.

STEP 3: Obtain a PTIN

PTIN stands for "Preparer Tax Identification Number." Before you can register for your EA exam, you must obtain a PTIN from the IRS. The PTIN sign-up system can be found at www.irs.gov/ptin. You will need to create an account and provide personal information. Foreign-based candidates without a Social Security number are also required to have a PTIN to register to take the exam; they will need to submit additional paperwork with their Form W-12 (PTIN Application and Renewal).

STEP 4: Register with Prometric

Once you have your PTIN, you may register and schedule your exam on the Prometric website by creating an account to set up your user ID and password. Alternatively, you can schedule an appointment to take the exam by calling 800-306-3926 (toll-free) or 443-751-4193 (toll), Monday through Friday, between 8 a.m. and 9 p.m. (ET); or by submitting IRS Form 2587.

STEP 5: Schedule Your Test

After creating an account, you can complete the registration process by clicking on "Scheduling." Your exam appointment must be scheduled within one year from the registration date. You can choose a test site, time, and date that is convenient for you. Prometric has test centers in most major metropolitan areas of the United States, as well as in many other countries.

You may schedule your exam through the website or call Prometric directly Monday through Friday (some centers have Saturday testing). The testing fee is nonrefundable. Once you have scheduled, you will receive a confirmation number. Keep it for your records because you will need it to reschedule (which may incur a charge), cancel, or change your appointment.

STEP 6: Adopt a Study Plan

Focus on one exam part at a time and adopt a study plan that covers each unit of your PassKey guides. The period of time you'll need to prepare for each exam is truly unique to you, based on how much prior tax preparation experience you have and your current level of tax knowledge, how well you understand and retain the information you read, and how much time you have to study for each test.

For those without prior tax experience, a good rule of thumb is to study *at least* 60 hours for each of the three exam sections. Part 2: Businesses may require additional study preparation, as evidenced by the lower pass rates. One thing is true for all candidates: for each of the tests, start studying well in advance of your scheduled exam date.

STEP 7: Get Plenty of Rest and Good Nutrition

Get plenty of rest, exercise, and good nutrition before the EA exam. You will want to be at your best on exam day.

STEP 8: Test Day

Be sure to arrive early at the test site. Prometric advises arriving at least 30 minutes before your scheduled exam time. If you miss your appointment and cannot take the test, you will forfeit your fee and must pay for a new appointment. Remember to bring a government-issued ID with your name, photo, and signature. Your first and last name must exactly match the first and last name you used to register for the exam.

STEP 9: During the Exam

This is when your hard work finally pays off. Focus and don't worry if you don't know the answer to every question, but make sure you use your time well. Give your best answer to every question. All questions left blank will be marked as wrong.

STEP 10: Congratulations. You Passed!

After celebrating your success, you need to apply for your EA designation by filling out Form 23, *Application for Enrollment to Practice Before the Internal Revenue Service*. Once your application is approved, you will be issued an enrollment card and you will officially be a brand-new enrolled agent!

Essential Tax Law Updates for Representation

Here is a quick summary of some of the essential tax figures for the enrolled agent exam cycle that runs from May 1, 2025 to February 28, 2026.

Note: The IRS has stated in the most recent version of the official Prometric SEE Candidate Bulletin that candidates should not take into account any legislation or court decisions made after December 31, 2024.

Important Legislation for the 2024 Tax Year:

- The ***Further Consolidated Appropriations Act, 2024,*** which was enacted on March 23, 2024, removed a significant portion of the additional funding for the IRS that was granted by the Inflation Reduction Act in the prior year.
- The ***SECURE 2.0 Act*** was signed into law as part of the *Consolidated Appropriations Act of 2023.* The Act included dozens of provisions affecting retirement plans. Many of the provisions in the SECURE 2.0 Act went into effect in 2024.
- The ***Corporate Transparency Act (the "CTA")*** was enacted by Congress as part of the National Defense Authorization Act. The CTA establishes a beneficial ownership reporting requirement for corporations, limited liability companies, and other similar entities formed or registered to do business in the United States. Starting on January 1, 2024, the CTA will mandate certain types of entities to submit a beneficial ownership information (BOI) report to the Financial Crimes Enforcement Network (FinCEN). Note that according to the testing specifications for the EA exam for this testing window, BOI reports are not included as a testable item on the exam.

New Proposed Regulations: On December 20, 2024, the IRS proposed changes to Circular 230. On December 20, 2024, the IRS proposed updates to Circular 230 rules (REG-116610-20), which govern practice before the IRS. These amendments aim to reflect legal changes and the evolving tax practice landscape. Key updates include: removing outdated sections related to registered tax return preparers and contingent fees, adding standards for qualified appraisers presenting evidence to the IRS, and revising other obsolete provisions.

Due Dates: Taxpayers will have until **April 15, 2025**, to file their 2024 tax return. The extended filing deadline is **October 15, 2025.**

Direct Pay for Businesses: Starting in 2025, the IRS now offers Direct Pay to businesses, simplifying tax payments. Previously, most businesses were required to use an EFTPS account to make their tax payments. The IRS has provided a table outlining payment types available through Direct Pay, streamlining the payment process for entities and easing administrative burdens. Since this is a new program, it is unlikely that the IRS will ask about this payment method for the current EA exam cycle.

FBAR Filing Deadline: The official due date for the FBAR (FinCen 114) coincides with the filing of the federal tax return (normally April 15). However, an automatic extension is allowed until October 15.

Form 1099: The Form 1099-NEC must be distributed to both recipients and the IRS by January 31, regardless of the filing method. For other types of forms, such as Form 1099-S and 1099-B, and 1099-MISC with amounts in Boxes 8 or 10, the IRS has revised the deadline for delivering recipient copies of these forms. They should be distributed to the recipient on or before February 15.[1]

Certifying Acceptance Agents (CAA): The IRS put a freeze on new applications to its Certifying Acceptance Agent (CAA) program in order to update and modernize its application procedures. This freeze was lifted on January 19, 2024. The purpose of this program is to assist both resident and nonresident aliens in obtaining an Individual Taxpayer Identification Number (ITIN), if they do not have or cannot obtain a Social Security Number (SSN). New Acceptance Agents will be able to help taxpayers with their 2024 returns in the current filing season. Instead of mailing in Form 13551, also known as the Application to Participate in the IRS Acceptance Agent Program, applicants must now use IRS e-Services and upload all required documents through the CAA upload tool.

E-file Mandate for Information Returns: The IRS issued final regulations requiring most businesses to e-file beginning on January 1, 2024. This mandate applies to individuals and businesses who submit 10 or more information returns, such as Form 1099, W-2, and 1099-MISC. Filers must aggregate almost all return types covered by the regulation to determine whether a filer meets the 10-return threshold (previously, a 250-return threshold applied separately to each type of information return). These new regulations significantly expand the number of entities that must e-file. A waiver may be requested in cases of undue hardship. Failure to e-file, when required, may result in penalties imposed on taxpayers and businesses who file their information returns on paper instead. The ten-return threshold does not make electronic filing mandatory for employment tax returns, such as Forms 940 and 941.

2024 Increase in penalty for failure to file: The penalty for failure of an individual to file a tax return that is more than 60 days late shall not be less than the lesser of (1) $510 or (2) 100% of the tax due on the return. This penalty applies to Form 1120 and Form 1040 returns.

Form 1099-K Requirements for 2024: The 2024 requirement for Form 1099-K reporting to the IRS is $5,000. Additionally, PayPal and Venmo will file Form 1099-K for any customer who was subject to backup withholding during 2024, regardless of total payments for the year. These reporting requirements do not apply to personal transactions such as birthday or holiday gifts, sharing the cost of a car ride or meal, or paying a family member or another for a household bill.

E-file Procedure: Electronically filed returns now account for nearly 93 percent of individual filings in FY 2024. During 2024, the IRS added 20 forms to its Modernized e-File (MeF) platform, but there are still over 100 IRS forms that taxpayers still cannot e-file.[2] For example, the IRS does not currently support e-filing for the Form 706, *United States Estate Tax* return, or Form 709, *Gift Tax* return.

[1] In case the IRS deadline falls on a weekend or federal holiday, the filing deadline automatically moves to the next business day.
[2] Taxpayer Advocate Service's 2024 Annual Report to Congress (ARC).

Current and Prior Two Years are Accepted: When a new tax form type is added to the IRS' Modernized e-File (MeF) platform, MeF will accept the current year and two Prior Tax Years. Tax Years beyond the two Prior Years cannot be filed through MeF. In Processing Year 2025, MeF will accept TY2024, TY2023, and TY2022 returns for Form 1040.

Form 8888, Allocation of Refund: This form is now only used to split a direct deposit refund between 2 or more accounts or to split a refund between a direct deposit and a paper check. The ability to buy paper Series I savings bonds with refunds has been discontinued in 2024, because the U.S. Treasury Department has ceased issuing paper Series I savings bonds.

Perfection Periods for Rejected Submissions (Publication 4164): When a transmitted electronic business return is rejected, there is a Transmission Perfection Period (look back period) to perfect that return for electronic re-transmission. The Transmission Perfection Period for an extension to file Form 4868, 7004 or 8868, is **five days**. Business returns (Form 1065, 1120, 1120-s, etc.) have a perfection period of **ten days** from the date of rejection. The following transmission dates pertain to individual returns:

- April 20, 2025, is the last day to retransmit rejected 2024 Form 1040 returns.
- October 20, 2025, is the last day to retransmit rejected 2024 timely-filed Form 1040 returns on extension from Form 4868.

Due Diligence Preparer Penalty (6695(g)): The penalty for failure to meet the due diligence requirements on tax returns containing EITC, CTC/ACTC/ODC, the AOTC, and/or HOH status is $600 per failure for tax returns filed in 2024 (2023 tax year) and $635 per failure for tax returns filed in 2025 (2024 tax year). This penalty is adjusted for inflation.

Passport Revocation threshold: The IRS can certify a taxpayer has "seriously delinquent tax debt," which can lead to the denial and/or revocation of a taxpayer's passport. The revocation threshold in 2024 is $62,000, which includes penalties and interest.

Tax Pro Accounts: The IRS recently launched Tax Pro Accounts, which lets tax professionals submit an authorization request to a taxpayer's IRS Online Account. This includes both power of attorney (Form 2848) and tax information authorization requests (Form 8821). Most requests are recorded immediately to the CAF database. Taxpayers can then review, approve, and sign the request electronically. IRS Publication 5533-A explains how to submit authorizations using a Tax Pro Account.

Identity Theft Affidavit Can be Filed Electronically with the IRS: IRS Form 14039 (Identity Theft Affidavit) can now be filed electronically with the IRS. While Form 14039 can still be mailed or faxed to the IRS, the IRS prefers that it be sent to them electronically. The electronic version of Form 14039 can be accessed from the IRS website at:
https://apps.irs.gov/app/digital-mailroom/dmaf/f14039/.

Voluntary ERC Disclosure Program: As part of an ongoing initiative aimed at combating dubious Employee Retention Credit (ERC) claims, the Internal Revenue Service launched a Voluntary Disclosure Program to help businesses who want to pay back the money they received after filing ERC claims in error. Those wishing to take advantage of the employee retention credit voluntary disclosure program had two opportunities in 2024 to participate in this IRS program.

Unit 1: Legal Authority of the IRS

More Reading:
Circular 230, Regulations Governing Practice Before the Internal Revenue Service
Publication 947, Practice Before the IRS and Power of Attorney
Publication 1, Your Rights as a Taxpayer

Part 3 of the EA exam focuses on the ethical standards, legal requirements, and regulations that govern the tax profession. This includes guidelines that tax professionals must adhere to, standards that they are expected to meet, who has the authority to represent taxpayers before the IRS, procedures for assessment, collection, audit, and appeals by the IRS, and penalties that tax preparers may face if they violate the law.

Part 3 of the exam is composed of the following sections and their corresponding percentage of questions:[3]

1. **Practices and Procedures – 26 questions**
2. **Representation before the IRS – 25 questions**
3. **Specific Areas of Representation – 20 questions**
4. **Filing Process – 14 questions**

Issues of ethics, practice, and representation are dealt with in detail in Treasury Department Circular No. 230, *Regulations Governing Practice before the Internal Revenue Service*.[4] The rules in Circular 230 are codified as **Title 31** of the Code of Federal Regulations. All practitioners who represent taxpayers before the IRS are subject to the rules and regulations outlined in Circular 230.

Note: The statutory authority to regulate the conduct of representatives before the IRS is not found in Title 26 of the U.S. Code, the Internal Revenue Code. Instead, it appears in Title 31 of the U.S. Code, Section 330. The Office of Professional Responsibility (OPR), which interprets and applies the regulations in Treasury Department Circular 230, functions separately from the Title 26 enforcement components of the IRS. The language, now codified as Section 330, was originally enacted in 1884 as part of a War Department appropriation for “horses and other property lost in the military service” and actually pre-dates the IRS and the income tax.

So, while Title 26 of the United States Code contains the tax laws enforced by the IRS, Title 31 of the *Code of Federal Regulations* contains the regulations that govern the practice of representatives before the IRS, ensuring that tax professionals adhere to tax practice standards and follow the law.

Tax return preparers play a crucial role in the U.S. tax system, as they are responsible for preparing around 60% of all filed tax returns. Their actions have a significant influence on the Internal Revenue Service's ability to properly administer tax laws effectively.

[3] These specifications are listed in the current Enrolled Agent Special Enrollment Examination Candidate Information Bulletin, which is available for download on the official Prometric website.
[4] Regulations governing practice before the IRS are also set forth in Title 31, Code of Federal Regulations, Subtitle A, Part 10, as published in pamphlet form as Treasury Department Circular No. 230 on June 12, 2014.

Federal Tax Law

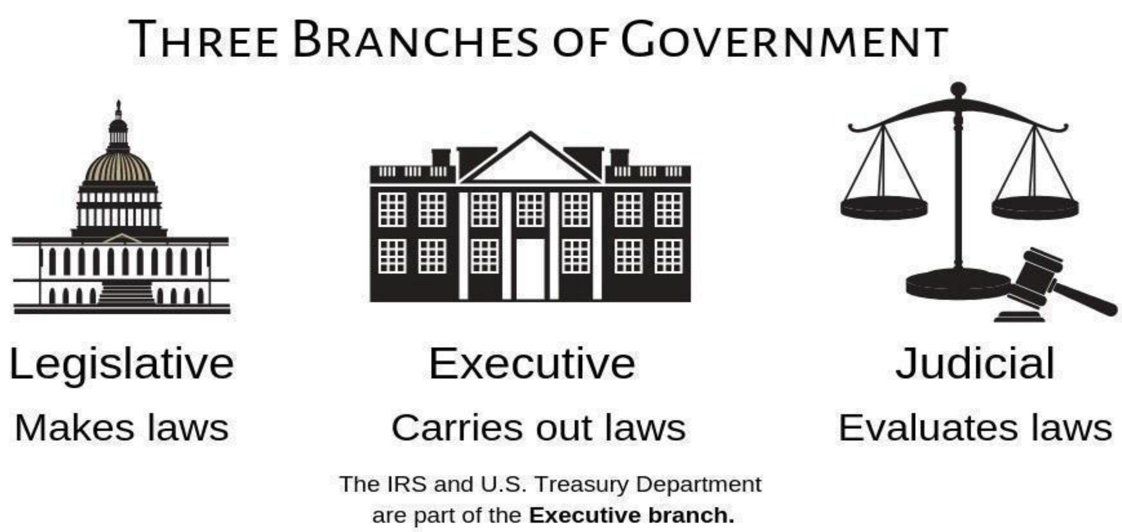
The Internal Revenue Code (IRC) is the main body of tax law of the United States. The IRC is enacted by Congress and published as **Title 26**, the Internal Revenue Code of the United States Code. The Federal courts interpret the IRC in judicial opinions, by the Treasury Department in Treasury Regulations, and in other administrative guidance published by the IRS. Other tax laws are promulgated by individual states, cities, and municipalities.

Not all Federal tax law is located in Title 26 of the United States Code. FBARs and most international financial reporting laws are promulgated in the *Bank Secrecy Act,* a provision of Title 31. Although the *Bank Secrecy Act* was focused initially on financial institutions, the law has been expanded by Congress beyond the regulation of banks.

In 2003, the Financial Crimes and Enforcement Network (FinCEN) delegated enforcement authority regarding the FBAR to the Internal Revenue Service (IRS).

Note: The enrolled agent exam deals only with federal laws and not with the laws of any individual state or municipality. However, some state laws directly affect federal tax reporting. An example of this would be community property laws, which determine how much income each spouse is required to report on a separate return.

Tax law is determined by all three branches of our federal government, although the legislative branch (Congress) has the primary function of originating tax laws. The executive branch (the president) is responsible for income tax regulations, revenue rulings, and revenue procedures. The judicial branch is responsible for court decisions. The U.S. courts also have the responsibility for determining whether a particular tax law is constitutional.



The U.S. Treasury Department (which includes the Internal Revenue Service) is part of the **executive branch** of the U.S. government. The U.S. Treasury collects taxes through the Internal Revenue Service. The president has veto powers, which means he can stop legislation from becoming law (subject to a veto override by a two-thirds vote in both the House of Representatives and the Senate).

The Internal Revenue Service (IRS) is a bureau of the Department of the Treasury, and it is responsible for enforcing the Internal Revenue Code. In other words, the IRS is the "collection arm" of the U.S. Treasury Department, which is responsible for paying various government expenses. However, the IRS does not have the power to enact tax statutes—that power belongs to Congress. Instead, the IRS's role is to interpret and implement the tax statutes enacted by Congress. If there are disputes about the interpretation of the tax laws, these disputes may be resolved by the courts.

The IRS produces several kinds of documents that provide guidance to taxpayers, including the following:

1. Treasury Regulations
2. Revenue Rulings
3. Revenue Procedures
4. Private letter rulings
5. Technical advice memoranda (also called "TAMs")
6. IRS notices

Each of these can factor into "substantial authority," which means the authority to serve as the basis for interpretation of current tax law and to establish precedents for the future. Treasury Regulations define substantial authority as existing when "the weight of authorities for the tax treatment of an item is substantial in relation to the weight of authorities supporting contrary positions."

The weight placed on an authority is determined by factors such as its relevance and persuasiveness, as well as the type of document in which it appears. In general, a revenue ruling holds more weight than a private letter ruling (other than to whom the private letter ruling was issued) discussing the same matter. Additionally, newer pronouncements hold more weight than older ones.

Example: Jesse is an enrolled agent. Recently, he made a mistake on his client's corporate tax return by claiming a significant business deduction based on a court case that was several decades old. Unfortunately, Jesse was not aware that this case had been overturned by a higher court in recent years, making it an outdated and invalid source for his deduction. As a result, when his client's return was audited, the business deduction was disallowed, and an accuracy-related penalty was assessed against his client. Jesse could also be assessed a preparer penalty for his negligence.

The **primary** authority for any tax position is the **Internal Revenue Code.** "Primary authority" also includes decisions by the U.S. Supreme Court, which is the highest court in the land, and international tax treaties. Other sources of tax law that factor into "substantial authority" include the following:

- Temporary and final Treasury Regulations (but not proposed regulations);[5]
- Court cases;
- Administrative pronouncements; and
- Congressional intent, as reflected in committee reports.

[5] Taxpayers generally may not rely on proposed regulations for planning purposes, except if there are no applicable final or temporary regulations in force and there is an express statement in the preamble to the proposed regulations that taxpayers may rely on them currently.

This list was later expanded to include private letter rulings, technical advice memoranda, IRS information or press releases, notices, and any other similar documents published by the IRS in the Internal Revenue Bulletin. Treatises and articles in legal periodicals are not considered substantial authority under this statute. An authority no longer remains an authority if it is overruled or modified by a body with the power to overrule or modify it.

Note: The IRS announced that all future frequently asked questions (FAQs) posted on irs.gov would be issued as a Fact Sheet as part of an IRS press release. By doing this, these FAQs can constitute authority for a tax return position. Please note that general content on the IRS webpage does NOT constitute substantial authority.

Note that *"substantial authority"* does *not* include official IRS publications or IRS form instructions. Many IRS publications are not updated every year, and reliance on IRS publications does not constitute substantial authority for purposes of avoiding understatement penalties. While a good source of general information, IRS publications cannot be used to sustain a position (IRM 4.10.7.2.8).[6]

The possibility that a return will not be audited or, if audited, that an item will not be raised on audit, is not relevant in determining whether the substantial authority standard (or the reasonable basis standard) is satisfied.

Example: Reggie Smith, a small business owner, filed his tax return, claiming a significant deduction for business expenses based on outdated information in an old IRS publication. He did not consult a tax professional or verify current law. When he filed his return, he believed that his audit risk was low. In 2024, Reggie's return was audited. The IRS found the deduction unsupported by the current tax law, leading to an understatement of his income tax by over 15%. The IRS imposed a 20% accuracy-related penalty for substantial understatement of income tax under IRC §6662. Reggie argued he relied on an IRS publication, believing it was substantial authority, and claimed he acted in good faith without intentionally disregarding current regulations. The IRS examiner disagreed with Reggie, stating that reliance on outdated IRS publications doesn't meet substantial authority standards.

Treasury Regulations

Treasury regulations are the U.S. Treasury Department's official interpretations of the Internal Revenue Code. The IRC authorizes the Secretary of the Treasury to "prescribe all needful rules and regulations for enforcement" of the code.[7] All regulations are written by the IRS's Office of the Chief Counsel and approved by the U.S. Treasury Secretary.

The courts give weight to Treasury regulations and will generally uphold the regulations so long as the IRS's interpretation is *reasonable* and does not contradict any provisions in the IRC. Treasury regulations are first published in the Federal Register. After publication in the Federal Register,

[6] IRS Publications generally explain the law in more easy-to-understand language than the actual primary law for taxpayers and their advisors. They typically highlight changes in the law and provide examples illustrating IRS positions on matters. IRS publications are non-binding on the IRS and do not necessarily cover all positions for a given issue. While a good source of general information.

[7] The Internal Revenue Service (IRS) is responsible for administering and enforcing the internal revenue laws and related statutes, except those relating to alcohol, tobacco, firearms, and explosives.

regulations are organized by subject matter and codified in a separate publication called the Code of Federal Regulations (CFR). The three types of Treasury regulations are:

1. **Legislative Regulations,**
2. **Interpretive Regulations, and**
3. **Procedural Regulations.**

Legislative regulations are created when Congress expressly delegates the authority to the Treasury secretary or the commissioner of the IRS to provide the requirements for a specific provision of the IRC. A legislative regulation has a higher degree of authority than an *interpretive regulation*. In general, legislative regulations carry the same authority as the law itself.

However, a legislative regulation may be overturned if any of the following conflicts apply:

- It is outside the power delegated to the U.S. Treasury.
- It conflicts with a specific statute.
- It is deemed unreasonable or unconstitutional by the courts.

Interpretive regulations are issued under the IRS's general authority to interpret the IRC. An interpretive regulation only explains the meaning of a portion of the code. Unlike a legislative regulation, there is no grant of authority for the promulgation of an interpretive regulation, so these regulations may be challenged on the grounds that they do not reflect Congressional intent.

Procedural regulations concern the administrative provisions of the code and are issued by the Commissioner of the IRS and not the Secretary of the Treasury. They often concern minor issues, such as when notices should be sent to employees or how to file certain IRS forms.

Classification of Treasury Regulations

Regulations are further classified as proposed, temporary, or final:

- **Proposed regulations** are open to commentary from the public. Various versions of proposed regulations may be issued and withdrawn before a final regulation is issued. Proposed regulations have minimal practical effect. A taxpayer may not rely on proposed Treasury regulations unless they contain an express statement permitting reliance. Unlike temporary regulations, proposed regulations do not expire.
- **Temporary regulations** remain in effect for three years. They provide immediate guidance to the public and IRS employees before publishing final regulations. Temporary regulations are effective immediately upon publication in the Federal Register.[8]
- **Final regulations** are issued when a regulation becomes an official Treasury decision. These are the official interpretations of the tax laws by the Treasury Department. They are the highest authority issued by the Treasury Department. They are issued after a period of public comment and become effective upon publication in the Federal Register. Final regulations <u>have the effect of law</u>.

[8] Unlike proposed regulations, temporary regulations go into effect immediately upon publication in the Federal Register, but they expire within three years of enactment (except for temporary regulations issued prior to 1989).

It is important to note that while these regulations provide the IRS's official interpretations of the tax laws, they are not the tax laws themselves. The tax laws, or statutes, are enacted by Congress and are contained in the Internal Revenue Code.

Note: The IRS is **legally bound** by its regulations, but the courts are **not.**[9] Official regulations have the force of law, unless they are overly broad in relation to the statute or are deemed unconstitutional by the courts. U.S. Treasury regulations are authorized by law, but U.S. courts are not obligated to follow any of the IRS' administrative interpretations.

Revenue Rulings and Revenue Procedures

The IRS issues **revenue rulings** and **revenue procedures** to inform and guide taxpayers. Neither has the force of Treasury Department regulations, but they may be used as authority. A revenue ruling typically states the IRS position, while a revenue procedure provides instructions concerning that position. Both revenue rulings and revenue procedures are important tools for understanding and complying with tax laws, offering clarity and guidance on various tax-related issues.

Study Note: A **revenue ruling** may announce that taxpayers may deduct certain automobile expenses. A **revenue procedure** will then explain how taxpayers must deduct, allocate, or calculate these automobile expenses.

Revenue rulings are intended to promote the uniform application of the IRC. The national office of the IRS issues revenue rulings, which are published in the Internal Revenue Bulletin. A revenue ruling is not binding in Tax Court or any other U.S. court. However, taxpayers can use revenue rulings as guidance to avoid certain accuracy-related IRS penalties.

Example of a Revenue Ruling
Revenue Ruling 87-41: This important Revenue Ruling provides guidance on the classification of workers as either employees or independent contractors. It outlines 20 common law factors that the IRS uses to determine the appropriate classification. These factors include the level of control the employer has over the worker, the financial arrangements, and the nature of the relationship between the company and the worker. For instance, if a worker is required to follow detailed instructions and is closely supervised, they are more likely to be classified as an employee than as an independent contractor.

Example of a Revenue Procedure
Revenue Procedure 2024-28: Provides taxpayers holding digital assets, such as cryptocurrency, with a practical framework to transition to the new IRS rules for basis tracking. A safe harbor introduced in Rev. Proc. 2024-28 shows taxpayers how to allocate unused basis across digital assets in multiple wallets or accounts before January 1, 2025, aiding compliance with the new rules.

[9] Certain court cases lend more weight to a position than others. A case decided by the US Supreme Court becomes the law of the land and takes precedence over decisions of lower courts. The IRS must follow Supreme Court decisions, and for the IRS, Supreme Court decisions have the same weight as the Internal Revenue Code.

The numbering system for revenue rulings corresponds to the year the ruling was issued. Thus, for example, revenue ruling 2025-1 was the first revenue ruling issued in 2025. Revenue procedures are official IRS statements of procedure that affect the rights or duties of taxpayers under the IRC. A revenue procedure may be cited as authority, but it does not have the force of law.

IRS Written Determinations

IRS Written Determinations are determinations the IRS is required to make open to public inspection. There are many types of official IRS correspondence and determinations including:

- Technical Advice Memoranda (TAM)
- Private Letter Rulings (PLR)
- Chief Counsel Advice (CCA)
- Information Letters

We will discuss the most common types in the subsequent section.

Technical Advice Memorandum (TAM)

A Technical Advice Memorandum is written guidance furnished by the IRS Office of Chief Counsel upon the request of an IRS director. A request for a TAM generally stems from an examination of a taxpayer's return, a consideration of a taxpayer's claim for a refund or credit, or any other matter involving a specific taxpayer under the jurisdiction of the territory manager or the area director.

Technical advice memoranda are issued only on closed transactions[10] and provide the interpretation of the proper application of tax laws, tax treaties, regulations, revenue rulings, or other precedents. TAMs are not published in the Internal Revenue Bulletin.

The purpose of a Technical Advice Memorandum ("TAM") is primarily to provide direction to IRS personnel on taxpayer matters needing additional legal interpretation clarification. The advice rendered represents the position of the IRS, but it only relates to the specific case in question on an already completed taxpayer transaction. Technical advice memoranda are made public after all the private information has been removed that could identify a particular taxpayer.

Example: Valley Dairy Farm, Inc. is a farming corporation with 55 employees. The company usually gives its employees a holiday ham at the end of the year. Because of dietary restrictions, some of the employees requested gift certificates instead of a holiday ham. In 2024, the business provided a holiday gift certificate with a face value of thirty-five dollars that was redeemable at several local grocery stores. Valley Dairy Farm excluded the value of the gift certificate from the employee's wages, and deducted the full amount as a business expense, arguing that it was a de minimis fringe benefit under Code §132. The IRS disagreed and determined that the gift certificates were essentially "cash equivalents," and not excludable from the employee's gross income. The full amounts of the gift certificates were taxable as wages to the employees, and subject to payroll taxes for both the employer and the employee (example based on TAM-108577-04).

[10] A "closed transaction" in IRS procedures refers to a financial event or transaction that has already been completed and is no longer ongoing. This means all actions related to the transaction have been finalized, and there are no pending activities or changes expected. Technical advice memoranda (TAMs) are issued based on these completed transactions to provide guidance on how tax laws and regulations should be applied to them

Example: Manhattan Literacy, Inc. is a 501(c)(3) tax-exempt organization that also has an affiliated 501(c)(4) organization, Manhattan Lobbyists, Inc. The 501(c)(4) organization did substantial lobbying activities for political candidates in New York. Although the organizations were separate legal entities, both organizations shared a website. Manhattan Lobbyists used pages on the website to distribute political campaign endorsements. While the Manhattan Lobbyists' website contains its own logo and address, it also contained the 501(c)(3)'s banner and related links. A website is a form of communication, and as a charitable entity, Manhattan Literacy is prohibited from disseminating any information that favors or opposes a particular candidate for public office. The IRS determines that Manhattan Literacy (the 501(c)(3) organization) had engaged in prohibited political activity by sharing its website with Manhattan Lobbyists, its affiliated 501(c)(4) organization. Manhattan Literacy was found to have impermissibly intervened in a political campaign by distributing campaign endorsements on its website (example based on TAM 200908050).

Private Letter Ruling (PLR)

A taxpayer who has a specific question regarding tax law may request a private letter ruling (PLR) from the IRS. A PLR is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific case. It is issued to communicate the tax consequences of a prospective transaction *before* the transaction is completed or before the taxpayer's return is filed.

A PLR is legally binding on the IRS, but only if the taxpayer fully and accurately described the proposed transaction in the request and carried out the transaction as described. In addition, it is only binding on the IRS for the *particular taxpayer* who requested the ruling. PLRs are made public after the taxpayer's private, identifiable information has been redacted (removed or blacked out).

The procedures and user fees for obtaining a letter ruling are published annually in the first revenue procedure of each calendar year. A private letter ruling is not free. The fee for many PLRs is $10,000, and some cost even more.

Example: Robert is 31 and permanently disabled. On March 1, Robert inherits a traditional IRA valued at over $1.5 million when his elderly father dies. Because Robert is disabled, he is eligible for public benefit programs, such as Medicaid. Robert does not want to risk losing Medicaid or his other state disability benefits, so his financial advisor suggests that he transfer the inherited IRA funds into a special needs trust of which he will be the beneficiary. The financial advisor recommends that Robert request a Private Letter Ruling from the IRS *before* initiating the transfer to make sure there would be no unintended Federal tax consequences to Robert. The IRS rules favorably, holding in the PLR that if the inherited IRA is transferred to a special needs trust, the transfer would neither trigger a taxable event nor be considered a gift to the trust (based on PLR 201116005).

Example: Dina has a mentally ill brother, named Paul. Paul had previously served one year in prison for a crime. During this time, Dina purchased a new primary residence and did not expect Paul to live there permanently. However, Paul was later released into Dina's care, and was ordered by the court to serve the remainder of his sentence under house arrest at the new home. This caused backlash from neighbors and harassment for Dina. With the recommendation of Paul's probation officer, Dina sold the house before owning it for less than two years, and she had a profit on the sale. The IRS allowed Dina to exclude some of her gain due to "unforeseen circumstances." (based on PLR 200403049)

Chief Counsel Advice (CCA)

These are written advice or instructions prepared by the Office of Chief Counsel and issued to IRS field or service center employees. CCAs provide legal interpretations and guidance on tax issues to IRS field offices and personnel. CCAs provide legal interpretations and advice on specific tax issues, helping ensure consistent application of tax laws across different cases. They are intended to assist IRS employees in their decision-making processes and to clarify complex tax matters. CCAs are publicly available and can be accessed by taxpayers and tax professionals for reference. However, they cannot be cited as precedent by taxpayers in their own cases.

Example: A large employer that was offering "Health and Wellness" programs as part of its Section 125 cafeteria plan. This policy provided wellness benefits, like a $1,000 monthly payment for participating in certain wellness activities, such as stress management workshops, with the benefit payments paid directly to the employees. The policy also included general counseling and telehealth benefits. As a response, the IRS Office of Chief Counsel released CCA 202323006, clarifying the tax treatment of these wellness programs. The IRS determined that these "wellness" payments are taxable income when there are no qualifying unreimbursed medical expenses. Thus, the $1,000 monthly "wellness" payment is taxable as wages and subject to all taxes, including payroll tax and income tax.

IRS Notices

An official IRS notice is a public pronouncement that may contain guidance involving substantive interpretations of the IRC or other provisions of the law. Information commonly published in IRS notices includes:

1. Weighted average interest rate updates
2. Inflation adjustment factors
3. Changes to IRS regulations
4. Tax provisions related to presidentially declared disaster areas
5. IRS requests for public comments on changes to regulations, rulings, or procedures
6. Internal Revenue Bulletin items

The Internal Revenue Bulletin (IRB) is the authoritative source of official IRS tax guidance. It is a weekly collection of items of substantial interest to the professional tax community. The IRB announces official IRS rulings and publishes Treasury decisions, executive orders, tax conventions, significant legislation, and certain court decisions.

Anyone may search the IRS website, *www.irs.gov,* for past issues of the IRB. Issues are available in both HTML and PDF file formats. The IRS often releases individual items in advance of their publication in the IRB. Tax professionals may subscribe to the IRS GuideWire service to receive automated email notifications about these items.

Internal Revenue Manual

The Internal Revenue Manual (IRM) is the single official compilation of policies, delegated authorities, procedures, instructions, and guidelines relating to the organization, functions, administration, and operations of the IRS. It serves as a guide for IRS employees in all aspects of their work.

For example, IRM 4.10.8 provides detailed guidelines for IRS examiners on how to write examination reports. IRM 4.10.8 covers the procedures for documenting findings, preparing workpapers, and writing the final examination report. It ensures that all examiners follow a consistent format and include all necessary information in their reports.

The current version of the manual covers areas such as tax submission processing, examinations, collection, and appeals. It also includes information on criminal investigations, legal advice, and court proceedings. The IRM is available to the public and can be accessed on the IRS website. The IRM is not considered "substantial authority" for positions taken on tax matters; however, IRS employees are required to follow it when working on taxpayer matters.

IRS Publications and Forms

The IRS disseminates information to both taxpayers and preparers through its official publications. For example, Publication 17 covers the general rules for filing a federal income tax return for individuals. Publication 17 supplements information contained in the tax form instruction booklet and explains the law in more detail, so it is an important document for taxpayers who prepare their own income tax returns.

Study Note: The Enrolled Agent exam is based mainly on IRS publications, and exam candidates will not be tested on court cases unless the law has already made its way into an IRS publication. Similarly, exam candidates will not be tested on any *pending* tax law or legislation. The exam is based on tax law from the prior year. However, EA candidates must understand the basics of tax law, the U.S. court system, and how it relates to taxpayers and tax professionals.

Although the information in publications is drawn from the Internal Revenue Code, Treasury Regulations, and other primary sources of authority, publications themselves are not "authority." Taxpayers and preparers may not rely on IRS publications to avoid accuracy-related penalties. In other words, if a taxpayer follows advice from an IRS publication and it turns out to be incorrect, the taxpayer could still face penalties. Instead, taxpayers should rely on more authoritative sources like the Internal Revenue Code and Treasury Regulations, especially when taking a position on a tax return.

Example: On January 25, 2019, the IRS released Publication 54, a guide for U.S. citizens living abroad to follow when filing their taxes. However, there was an error in this publication regarding the filing requirements for married taxpayers filing separately. It stated that these individuals only needed to file a return if their gross income exceeded $12,000, the normal standard deduction amount for single or married filing separate taxpayers for 2018. Because of changes in the Tax Cuts and Jobs Act, for an MFS return the filing threshold was $5, not $12,000, as the publication incorrectly stated. Approximately 9 months later, on September 6, 2019, the IRS disclosed the error in the publication on IRS.gov. However, the IRS did not issue a public press release, or issue an announcement to acknowledge the problem and clarify the filing requirement. The IRS also did not provide automatic penalty relief to affected taxpayers who may have relied on the publication for guidance. It was only after the Taxpayer Advocate Service made a public post about the error that the IRS finally revised Publication 54 to correct this mistake, but the revision did not occur until December 13, 2019, almost a year later, which was well after the filing season for most taxpayers.

Example: Alvan Bobrow took $65,000 out of his traditional IRA account, intending to replace that money within 60 days, in order to have the transaction treated as an indirect IRA rollover, rather than a taxable distribution. Just before the sixty-day rollover deadline elapsed, Alvan took another distribution from a second IRA, (IRA-2), and placed those funds into IRA-1. Alvan's tax return was later chosen for audit and his second purported rollover was invalidated under the once-per-year indirect rollover rule. The taxpayer had relied on information in IRS Publication 590, but the information in the publication was incorrect at the time. The court determined that the publication did not provide substantial authority for Mr. Bobrow's position. Mr. Bobrow lost his case. See Bobrow v. Commissioner (T.C. Memo 2014-21)

Note: In *Bobrow v. Commissioner,* a U.S. Tax Court judge famously declared, *"Taxpayers rely on IRS guidance at their own peril."* Judge Joseph W. Nega wrote that IRS guidance was not "binding precedent" or "sufficient authority" to excuse the taxpayer from penalties. The IRS later revised the publication at issue.

Tax Forms and Schedules

IRS tax forms and schedules are used by taxpayers to report financial information to the IRS and calculate taxes to be paid or disclose other information as required by the Internal Revenue Code. There are hundreds of forms and schedules in use. Many have accompanying instructions for taxpayers. Forms, schedules, and instructions are updated whenever necessary due to changes in the tax code.

All publications, forms, and instructions are listed and available for download on the IRS website at *www.irs.gov,* usually in both HTML and PDF file formats. Updated versions of publications are listed with the date revisions were made, so taxpayers can know they are using the most current information. Due to the growth in electronic filing and the availability of free access to tax forms online, the IRS no longer mails paper tax publications or paper forms to taxpayers.

Court Decisions

Often, taxpayers and tax representatives will disagree with the IRS's interpretation of the IRC. In these cases, it is up to the courts to determine the proper application of the tax law to the facts of the case at hand. There are many instances where tax laws are disputed or even overturned. Court decisions then serve as guidance for future tax decisions.

In most instances, the IRS chooses whether or not to acquiesce to a court decision. This means that the IRS may decide to ignore the court's ruling and continue with its regular policies regarding the litigated issue.

The IRS is not bound to change its interpretation of the tax law due to a loss in court. The only exception to this rule is the U.S. Supreme Court, whose decisions the IRS is obligated to follow.

The IRS does not announce acquiescence or nonacquiescence in every case. When it does announce its position, the IRS publishes its acquiescence or nonacquiescence in the Internal Revenue Bulletin in an "action on decision." The issuance of a nonacquiescence usually reflects that the IRS does not agree with the result reached by the U.S. Tax Court, and will continue to challenge the decision. The IRS may also retroactively revoke acquiescence to any case.

Example: In the tax case *Jacobs v. Commissioner*, the U.S. Tax Court concluded that the pregame meals provided to the Boston Bruins professional hockey team were not subject to the then-50% meal limit. The Bruin's attorneys successfully argued that the meals were *de minimis* fringe benefits under §132(e)(2). The Tax Court held in favor of the Bruins' owners, holding that they were entitled to the deduction because the team's pre-game meals were provided at "employer-operated eating facilities," which qualified as an employee fringe benefit. The IRS later issued a partial acquiescence to the case, stating that the IRS would follow *Jacobs* only with respect to cases involving sports teams in which the material facts are substantially identical to those present in *Jacobs*.

Freedom of Information Act Requests (FOIA)

The Freedom of Information Act (FOIA) is a law designed to ensure public access to U.S. government records.[11] Upon written request, federal agencies, including the IRS, are required to disclose requested records, unless they can be withheld under certain exceptions allowed in the FOIA. Under the terms of the act, agencies may charge reasonable fees for searching, reviewing, and copying records that have been requested.

All IRS records are subject to FOIA requests. However, FOIA does not require the IRS to release all documents that are subject to FOIA requests. The agency has the right to withhold information based on specific exemptions outlined in the FOIA statute. These exemptions aim to protect national security, individual privacy, the proprietary interests of business, the functioning of the government, and other vital recognized interests.

Certain exclusions apply to sensitive law enforcement records pertaining to criminal investigations, FBI counterintelligence efforts, and international terrorism activities. Of most pertinence to FOIA requests to the IRS, IRC Section 6103 normally precludes the IRS from releasing any tax returns or tax return information. This requirement would apply even with an FOIA request.

When a record contains some information that qualifies as exempt, the entire record is not necessarily exempt. Instead, the FOIA specifically provides that any portions of a record that can be set apart must be provided to a requester after deletion of the exempt portions.

The IRS generally has 20 business days (excluding Saturdays, Sundays, and legal public holidays) to say whether it will comply with an FOIA request. When a request is denied, the IRS must give the reason for denial and explain the right to appeal to the head of the agency.

Note: There is a different type of FOIA request specific to tax preparers which is covered in Unit 3, *Authorizations and Disclosures.*

A taxpayer may contest the fees charged in processing a records request. The IRS will copy the requested records and send the taxpayer a bill for the fees.

Taxpayer Bill of Rights

The IRS must adhere to the Taxpayer Bill of Rights as described in the *IRS Restructuring and Reform Act of 1998.* However, the Tax Court has ruled these are not legally enforceable rights. This law was designed to better communicate to taxpayers their existing statutory and administrative protections.

[11] For more information, see The Freedom of Information Act Guide to Treasury Records at *www.treasury.gov* and Freedom of Information Act (FOIA) Guidelines at *www.IRS.gov.*