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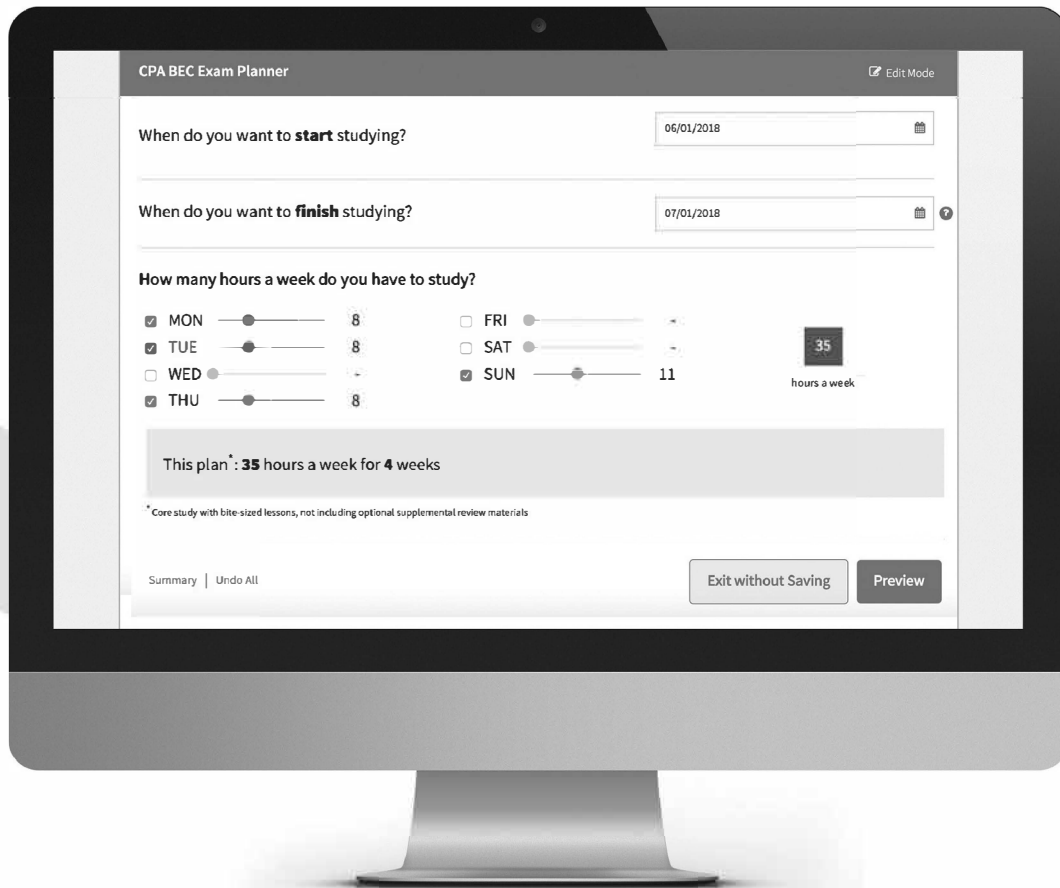
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STUDY GUIDE

JANUARY 2020

REGULATION

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Currently she has six textbooks and monographs in circulation. The ninth edition of her textbook, *Case Studies in Business Ethics*, and the 11th edition of her textbook, *Business: Its Legal, Ethical and Global Environment*, were published in January 2017. Her first textbook, *Real Estate Law*, had its 11th edition published in 2016. Her text, *Anderson's Business and the Legal Environment*, had its 23rd edition published in 2016.



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Welcome to Regulation

Welcome to Regulation (REG)! This lesson is an important step in your journey to CPA exam success. This series of videos will introduce you to your professors, provide guidance in the planning, application, and registration process. In addition, there are videos that provide an overview of the exam structure, time management hints, effective study strategies, and tips on how to maximize your points. Perhaps most important, the last video is a gentle reminder of how important it is to take care of you. Scroll down in the video window pane to get started.

Ethics, Professional Responsibilities, and Federal Tax Procedures

In the REG section, I am initially responsible for the 10%–20% of REG that is devoted to Ethics, Professional Responsibilities, and Federal Tax Procedures. This material has been organized to cover much of the body of ethical rules that exist outside the Code of Professional Conduct, which is covered primarily in AUD. This material applies mostly to CPAs involved in tax practice.

Recently the AICPA dropped coverage of the Statements on Standards for Tax Services (SSTs), primarily because those rules are largely duplicated in the IRS's Circular 230, which sets forth the practice rules for those who wish to engage in tax practice before the IRS, including CPAs. So, this ethics coverage begins with the important provisions in Circular 230 and is then supplemented by various Internal Revenue Code (IRC) civil and criminal statutory provisions that apply to tax return preparers (TRPs) and others.

Going beyond taxation, the section on licensing and disciplinary systems covers the rules of state boards of accountancy that are imposed for those who wish to qualify for a CPA license. It also covers the grounds upon which those licenses might be taken away and the applicable procedures.

Moving from Ethics and Responsibilities in Tax Practice to Federal Tax Practice and Procedures, the material then moves into significant IRS rules regarding substantiation and disclosure of tax positions, taxpayer penalties for violation, sources of tax authority, and related concepts.

Finally, the last section before Business Law deals with common law duties and liabilities to clients—the stuff CPAs get sued over. And there is a section on important professional matters such as privileged communications and obligations to keep client communications confidential and client records private.

~ Professor Robert Prentice

Business Law

The scope of material in the Regulation—Business Law Section that is fair game under the AICPA content guidelines has been changed significantly but is still vast (10%–20%). Cover all the material in each subject area as thoroughly as possible, but use the new learning objectives to help you stay focused on the big picture so that you can easily compartmentalize the minutiae. Regulation topics areas have a great deal of detail. All these details are fair game for the exam questions. Going over the material just once is inadequate to fully master it. For many of you, some of these subject areas will be completely new learning experiences. Whether the subject area is new to you or you studied it in college, take the lessons one at a time and in 30-minute increments. Then take the time to go back and review. If you try to master all the details in huge blocks of study time, you will not conquer the material. Do a little each day. Then go back and use the tools again to get more familiar with those concepts. When you are able to sit down and write your own outline or flow chart of each area, without referring back to the text, the flash cards, or the video, you have reached a point of mastery.

In addition, I recommend the following:

- A. Review the Overview for each general subject area. The Overview gives you my opinion of where to emphasize your study.
- B. Read the lesson text and view the video—go over the examples in the text and videos carefully.
- C. Go through all of the questions available to you. The more questions you do, the more knowledge you have about question patterns, and the more you will realize that certain themes are repeated with different fact patterns. If you do not understand a particular question, use the discussion forum to post the question and ask for more explanation on the area. Also, going through the mentored discussions

often clears up areas that are not familiar to you and can prevent you from spending too much time on one question or issue.

- D. The exam does more than test in each subject area. The exam includes questions that have crossover material. For example, it is not unusual for an exam question to cover issues of bankruptcy along with UCC Article 9 secured transaction questions. Often the answer for a question will require you to combine contracts formation with an issue related to suretyship. The materials include many of these combined topic questions. These questions are the best form of review because they require mastery of more than one area and integration of the materials.

~ Professor Marianne M. Jennings

I am also responsible for the Government Regulation of Business and Business Structure (Selection of a Business Entity) portions of Business Law (which comprises 10%–20% of REG).

Much important material is contained in these sections.

Government Regulation of Business is divided into two sections—federal securities regulation and all other federal regulation. That division alone should tell you how important securities regulation is.

Federal Securities Regulation can itself be subdivided (largely) into the part based on the Securities Act of 1933 (that governs the initial sale of securities in the primary markets) and the part based on the Securities Exchange Act of 1934 (that governs the trading of securities in the secondary markets). Over the years, the CPA Exam has emphasized the definition of a “security,” the Regulation D exemptions for registration, and the differences between the 1933 Act’s Section 11 (a negligence-based statute that punishes false statements in the audited financial statements contained in registered public offerings) and the 1934 Act’s Section 10(b) (an intent-based statute that punishes fraudulent statements of any type when securities are being bought and sold). Although an accountant’s potential liability under Section 11 and Section 10(b) have long received much attention on the exam, recent disclosed questions indicate that the 1933 Act’s Section 12(a)(1) and 12(a)(2) and the 1934 Act’s Section 18(a) have received attention as well. The JOBS Act of 2012 made some significant changes to the 1933 Act material. What is an EGC? What is crowdfunding?

Other Federal Laws and Regulations—The material in this section has traditionally not received as much attention as the securities laws have, although it covers a wide range of federal regulatory matters, including labor law, employment law, and antitrust law. It might pay to give special attention to new content areas recently added to the course content specifications, including copyrights, patents, and money laundering.

~ Professor Robert Prentice

Federal Taxation

The challenge in the tax area is that there are so many topics that can be tested. However, once a topic is chosen for the test, the question asked is usually somewhat basic. So make sure you know the foundational concepts very well and do not be as concerned about the complex areas.

When you take the exam, you will be working problems, so that is what you must practice. Do not just read the problems and the solutions. That will not prepare you. Work as many problems as you possibly can.

~ Professor Gregory A. Carnes

**Ethics, Professional
Responsibilities,
and Federal
Tax Procedures**

Ethics and Responsibility in Tax Practice

Regulations Governing Practice before the IRS

After studying this lesson, you should be able to:

1. Recall the regulations governing practice before the IRS.
2. Apply the regulations governing practice before the IRS to a specific scenario.

I. Introduction

- A. Circular 230 contains the IRS's rules of practice governing CPAs and others who practice before the agency. The government may censure, fine, suspend, or disbar tax advisors from practice before the IRS if they violate Circular 230's standards of conduct. "Practicing" entails primarily preparing and filing documents, and communicating and meeting with IRS representatives on behalf of a taxpayer.
- B. Subpart A of Circular 230 sets forth rules governing authority to practice before the IRS. Most importantly, Section 10.3 provides that "[a]ny certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that he or she is currently qualified as a certified public accountant and is authorized to represent the party or parties."
- C. Who may practice before the IRS? As long as they are not under suspension or disbarment:
 1. Attorneys
 2. CPAs
 3. Enrolled agents
 4. Enrolled actuaries (enrolled by the Joint Board for the Enrollment of Actuaries), but their practice is generally limited to issues related to qualified retirement plans
 5. Enrolled retirement plan agents, but their practice is limited to issues related to employee plans and to IRS forms in the 5300 and 5500 series
- D. **Practice before the IRS**
 1. Practice before the IRS includes all matters connected with a presentation to the IRS or any of its officers or employees related to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS.
 2. These presentations include, but are not limited to:
 - a. Preparing documents
 - b. Filing documents
 - c. Corresponding and communicating with the IRS
 - d. Rendering written advice with regard to transactions having a potential for tax avoidance or evasion
 - e. Representing a client at conferences, hearings, and meetings
 3. A power of attorney (Form 2848) is required for an individual to represent a taxpayer before the IRS.
- E. Subpart B of Circular 230 contains the substantive rules that govern tax practitioners, including CPAs. Our discussion will focus on those rules.
- F. Subpart C spells out sanctions for violations. Subpart D contains procedural rules for disciplinary proceedings.

II. Substantive Provisions

- A. Furnishing Information**—A practitioner must *promptly* submit to the IRS any records or information that its agents and officers request properly and lawfully, “unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.” In other words, Section 10.20 requires prompt cooperation with all IRS requests for information.
- B. Client’s Omission**—What if you learn that your client has not complied with the laws or made an error or omission on a tax return? Consistent with AICPA ethics guidelines, Section 10.21 requires the practitioner to promptly notify the client of the error and its potential consequences, but the practitioner need not notify the IRS of the error and may not do so without the client’s permission.
- C. Due Diligence and Reliance on Others**—Practitioners must exercise *due diligence* in all aspects of their tax practice, including preparing tax returns and making representations to the IRS. Section 10.22 allows a practitioner to rely on the work product of others, if the practitioner used reasonable care in engaging, supervising, training, and evaluating them, although Sections 10.34 and 10.37 contain a couple of slight limitations on this reliance.
- D. Delays**—Practitioners may not *unreasonably* delay the prompt disposition of any matters before the Service. Stalling tactics are strongly discouraged by Section 10.23.
- E. Assistance from the Disbarred**—What if your former partner violated regulations and has been disbarred by the IRS? She still needs a job and wants to continue to do the same work as before, but have you sign off on everything since you are still in good standing. Section 10.24 provides that a practitioner should not knowingly accept even indirect assistance from any person disbarred or suspended from practice by the IRS.
- F. Practice by Former IRS Agents**—The IRS is concerned about abuses by former IRS agents who might try to exploit their former position when they leave the Service. Therefore, Section 10.25 contains extensive rules meant to prevent conflicts of interest, such as IRS employees going into private practice and working on cases they had knowledge of when they worked for the government. For example, if IRS agent Fred worked on a matter involving taxpayer Stan within one year before he left the IRS, he could not join an accounting firm and represent Stan in that matter within two years of leaving the Service. Fred should not use his knowledge or influence in assisting or representing Stan in IRS proceedings during that two-year period.
- G. Notaries**—A practitioner must not act as a notary public with respect to matters before the IRS in which he or she is involved or interested (Section 10.26).
- H. Fees**
- 1. Unconscionable fees**—No practitioner may charge an *unconscionable fee* for representing a client before the IRS.
 - 2. Contingent fees**—The rest of Section 10.27 relates to contingent fees, providing that a practitioner *may not* charge a contingent fee for providing services before the IRS, with three exceptions. A contingent fee may be charged:
 - a.** For services rendered in connection with an IRS *examination or challenge* to either (i) an original tax return or (ii) an amended return or claim for refund when they were filed within 120 days of receiving a written notice of examination or written challenge to the original exam
 - b.** Where a claim for refund is filed solely in connection with determination of statutory interest or penalties
 - c.** When the accountant is representing the client in judicial proceedingsIn these three situations, the threat that the tax practitioner and client will play the “audit lottery” (taking an aggressive position because it is unlikely that the Service will substantively examine it) is small.
 - 3. PCAOB**—Remember that the PCAOB believes that a public company auditor is not independent from an audit client if it offers that client any services on a contingent fee basis.

- I. Return of Client Records**—What if you have fired the client, or the client has fired you? You still have the client’s tax records, but perhaps the client has not paid you. You don’t want to give the client’s records back until you are paid. Section 1028 instructs the practitioner to promptly return any and all records needed for the client to comply with federal tax obligations. The practitioner may keep a copy. The rule specifies that the existence of a fee dispute does not change this obligation but recognizes that if applicable state law permits retention in the case of a fee dispute, the practitioner need return only those records that must be attached to the taxpayer’s return. However, the rule further provides that the practitioner “must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her Federal tax obligations.” The rule broadly defines “records of the client,” but states that “[t]he term does not include any return, claim for refund, schedule, affidavit, appraisal or other document prepared by the practitioner . . . if the practitioner is withholding such documents pending the client’s performance of its contractual obligation to pay fees with respect to such document.”
- J. Conflicts of Interest**—Section 1029 provides that practitioners should not represent a client before the IRS if to do so would create a *conflict of interest*.
1. Such a conflict exists if the representation of one client would be adverse to that of another, or if there is a significant risk that the representation of one client would be *materially limited* by the practitioner’s responsibilities to another client.
 2. Notwithstanding the existence of a conflict of interest, however, practitioners may represent a client if they:
 - a. Reasonably believe that they can provide competent and diligent representation to the client;
 - b. The representation is not prohibited by law; *and*
 - c. The affected client gives *informed* consent in writing. Practitioners should keep the consents on file for at least three years.
- K. Solicitation**—Section 10.30 contains several limitations on solicitation of clients. Among others, false advertising is, of course, prohibited. But practitioners may publish accurate written schedules of fees and hourly rates.
- L. Check Negotiation**—A practitioner who prepares tax returns may not endorse or otherwise negotiate any check issued to a client by the IRS, according to Section 10.31.
- M. Practicing Law**—Tax accountants, typically, learn quite a bit of tax law, but nothing in Circular 230 is meant to authorize persons who are not members of the bar to practice law (Section 10.32).
- N. Best Practices**—Section 10.33 sets forth **best practices** for tax advisers, including:
1. Communicating clearly with the client regarding the terms of the engagement, including the purpose, use, scope, and form of the advice
 2. Establishing the facts, determining which facts are relevant, evaluating the reasonableness of assumptions or representations, relating the applicable law to the relevant facts, and arriving at a conclusion supported by the law and the facts
 3. Advising the client regarding the import of the conclusions reached, including whether taxpayers may avoid accuracy-related penalties if they rely on the advice;
 4. Acting fairly and with integrity when practicing before the IRS
 5. Exercising any firm supervisory powers to ensure that firm employees act in accordance with best practices
- O. Tax Return Standards**—Section 10.34 instructs practitioners not to willfully, recklessly, or through gross incompetence sign a tax return or claim for refund that the practitioner knows or reasonably should know contains a position that: (1) lacks a reasonable basis; (2) is an unreasonable position as defined by the Internal Revenue Code (Section 6694(a)(2)); or (3) is a willful attempt to understate