



## Conflict of Interest

Exists if:

Work with one client will be directly adverse to another client

Examples?

## Conflict of Interest

Exists if work for one or more clients will be materially limited by the practitioners responsibilities to:

- Another client
- A former client
- A third person
- Personal interest

## Conflict of Interest

If a conflict exists, the practitioner can still work with a client IF:

- You believe you can diligently represent each client
- The work is not prohibited by law
- Each affected client gives informed consent
- Each affected client waives the conflict in writing.

## Conflict of Interest

- Each waiver must be made within 30 days of recognition of a conflict
- Each signed waiver must be retained for 36 months after the conclusion of the work

## Diligence as to Accuracy

Circular 230  
Section 10.22

## Due Diligence

In general: A practitioner must exercise due diligence —

- (1) In preparing or assisting in the preparation of, approving, and filing tax returns,
- (2) In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and
- (3) In determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.

## Ethics

So you must exercise due diligence...  
But what is it??

## Due Diligence

What is due diligence?

Karen Hawkins (in 2014) defined due diligence as:

- Knowing the relevant facts
- Knowing the law
- Matching the facts and the law

## Ethics

What are the issues?

What do you do?

Sam Smith-Rider has been your client for a few years. He does remodel construction, and in fact, you had him do a small project for you in 2018. You paid in cash since it was only \$450.

When he brings in his tax information, he brings his records including his 1099's. You see that he has claimed income of only the amounts listed on the 1099's.

What is due diligence in this case?

Do you have a conflict of interest?

Henry Jones comes to you as a new client with his information. He has a small W-2 and immaculate records for his new business that started this year. He had no sales and explains that he is just getting started in his antiquity recovery business. His expenses are large, with a lot of foreign travel and will put him in an NOL situation.

What is due diligence in this case?

Rudy and Ida Jones have been your clients for many years and are quite elderly but have pensions, SS and investments. Ida calls you in late March and says that Rudy is sick and asks for an extension, even though Rudy normally handles the taxes each year. It is now October. You call them to find out how things are, and find that Rudy has died and the family has moved Ida to a care facility. You know that they have owed tax every year and want to help. IDA is confused...

What do you do?

What are the due diligence issues?

What about the disclosure form?

Alice Tommera, a new client, brings in her w-2, last year's return, and her children's information so that you can file her return. You prepare it, she comes in to sign it and pays you in cash. You later get an e-file rejection that states the social security number is that of a deceased person.

What do you do?

What is (was) due diligence in this case?

You prepare the return for a small not for profit company. You notice some small payments (less than \$100 each) to servers for the fund raiser. You recognize one of the names listed with an amount. No 1099's were required to be issued.

The person comes in to have her return prepared and you don't see the amount listed on her information.

Is there a conflict of interest?

Who do you care about most?

Do you prepare the return?

Which client do you talk to?

What can you reveal?

A new client, Todd Smith, calls you in February and brings some data with him. There are several items missing, so you make a list for him. In March, he sends you an email with some of the missing items. It is now April 5 and he sends brokerage statements and child care statements. You ask yourself: What children? What stocks?

What are the due diligence issues?

What do you do?

- Joe Fields is a client who has a diner down the road. The place is always busy. He comes to you to do his taxes. He shows a loss on his handwritten profit and loss. When you ask to see his 1099 from the merchant account, it is more than his stated income.
- What is due diligence in this case?
- Joe comes back after reviewing his profit and loss and shows income of \$100 a month over the merchant amounts. His expenses are higher than before and he still shows a net loss.

What is due diligence in this case?

Jim and Marcia have been your clients for several years. Last year they told you they were divorcing but wanted you to continue as the preparer for each of them. You agree because they seem amicable, but you have them sign conflict of interest agreements.

This year, Marcia comes in and gives you her information. She tells you that she has \$6000 of child support. You prepare the return and she has EIC of \$1000.

When Jim comes in, he tells you that he has \$6000 of alimony and he brings his divorce decree with him.

What are the due diligence issues?

Is there a conflict of interest?

What do you do?

Bill and Sally Adams have been your clients for several years. Sally calls to say that she is bringing in their tax information for you to do the return. She also bends your ear about her pending divorce. She says that they have agreed to file jointly for 2018.

What do you do about 2018?

Is there a conflict of interest?

What do you do about the future?

Bill and Sally, now divorced, each come in separately to sign the joint return. Bill pays the bill. Later Sally calls and says her lawyer wants a copy of the check used to pay the bill.

Do you have a conflict of interest?

What do you do?

Sally calls you to say that she has gotten a letter from the IRS with a big bill. She wants you to handle it for her. You tell her it is a joint return and both Sally and Bill will need to sign POA's to allow you to handle it. She tells you that is a problem as they are no longer speaking and he has a TRO out against her.

What are the issues (besides the obvious ones)?

What is due diligence in this case?

Bill calls you and says he got a letter from the IRS with a big bill. You know about that because Sally had you review her letter and you found a \$25000 1099 that Sally did not report. She paid the bill. You tell Bill that you will get back to him.

What can you tell him?

Is there a conflict of interest?

What do you do?

Sam and Glenda come to you to have their tax return prepared. You see that last year they had very little income. This year they have very little income as well. They will get a big EIC due to their three children.

What is due diligence in this case?

You prepared the 1040 for your brother-in-law, Phillip, for 2017. He has a Schedule C business with a loss for 2017 and losses in most past years. He calls you to say that he has been audited. To save money, he went to the audit on his own. He tells you that he may have messed up because as he was chatting with the agent (he seemed so interested), he mentioned how much fun he has, like a hobby. He implies to you he saved the day by saying you told him to make it a business.

What are the issues?

What do you say to Phillip?

What is (was) due diligence in this case?

The auditor for Phillip calls you and asks about his claims. He mutters about preparer penalties.

What do you say to the auditor about Phillip?

Do you have a conflict of interest?

What are you doing to prevent preparer penalties?

Tim Dona is your biggest client. He, with his schedule C, payroll and bookkeeping and his family's other returns account for a third of your business. He calls to say that he is forming a non profit association with a friend. You have never done a non profit return or set one up. You know he is a One-stop-shop kind of guy.

What are the issues?

What do you tell him?

Do you have a conflict of interest?

You have a new client, Ann Tennett, from 2018 who had very little income in that year.

Although she emailed a document to you in early February, it is now April 12 and you have heard nothing more. You send an email asking whether she wants to do an extension, because you don't do automatic extensions, but get no response. It is now tax day.

Do you file an extension?

What is due diligence in this case?

You did not file the extension. Ann finally calls in October and has you do the return. You see a \$70000 distribution from retirement. The taxes due are over \$25000.

What are the issues?

What do you do?

Ann calls in November and wants to meet with you. She brings in two bills for penalties and interest for late filing for over \$5000. She is pretty steamed.

What are the issues?

What do you do?

Harry Thurman is a single dad. He gets a big EIC each year. When you are working on this year's return, you notice that you made a typo on last year's return. You see that the correct number will increase his tax by \$650. You are surprised the IRS has not caught it...yet.

What are the issues?

What do you do?

Larry Thurman is a single dad. He gets a big EIC each year. When you are working on this year's return, you notice that you made a typo on last year's return. You see that the correct number will increase his tax by \$45. You are surprised the IRS has not caught it...yet.

What are the issues?

What do you do?

- You and several of your friends and family are part of an investment club which has put money into a local startup-Wishing You Well Inc. The treasurer of WYW calls and says she was referred to you by a friend and wants you to prepare the corporate return. She is unaware of your investment.

- Do you have a conflict of interest?
- What do you do?

- You did the return for Wishing You Well Inc last year. When you get their data for this year, it appears that they are struggling. It also seems that they are not paying their payroll taxes.

- Do you have a conflict of interest?
- What do you do?

- Armond Nielson moved from Washington to Oregon in 2017 and had you do his return. He seemed a little slippery, but you felt the return was accurate. Now it is 2018, and he has a full year of Oregon tax to pay. When you tell him the tax number he gasps and says that he lives in Washington- at least part time.
- What is (was) due diligence in this case?
- What do you do?

- You have prepared the 1065 for Good Eats LLC for the last five years. You also prepare the personal returns for Glenda Smith (the TMP) and Arnold Jones- two of the partners. There is a third out-of-state partner whose return you do not prepare. As the preparer for the partnership, you get a letter from an attorney stating that the third partner believes there are criminal irregularities in the records. The attorney wants copies of the last 4 years of returns.
- Do you have a conflict of interest?
- What is due diligence in this case?
- Do you send the returns to the attorney?

Your new client, Dolores comes in and gives you her information. She tells you that she is a head of household and has \$6000 of child support; all because of her divorce. You prepare the return and she has EIC of \$1000.

Later she brings in a letter from the IRS with a bill- caused by more income and the loss of her EIC.

You are baffled...

What are the issues?

What was due diligence in this case?

Your client, Teresa, is always last minute. She drops off her business information and rushes off. You spend many hours working up her P&L, but have questions. You email her your summary with the questions. The next day, she comes in and wants her originals because she read an ad on the internet about a company that guarantees refunds.

What do you do?

Teresa, who picked up her records last week, calls and says she was mistaken about the internet company. She wants to drop off her records again and have you finish the return for her. Except for the questions, it was all done.

Do you have a conflict of interest?

What do you do?

- William Hamment comes to you as a new client. You look at his past year returns (he brings in four years) and see that his preparer has not taken depreciation on the rental house. He explains that he lived in the house for 10 years and planned to sell it right away. Time got away from him, but he does not have to pay tax on the sale of a home anyway, right?
- What is your response and actions?

Chris Beckerson, owner of Artist Landscape LLC comes to you for help with an audit. She has, for years, filed her business as a schedule C. She uses turbo tax. Although she is working with the auditor, she wants your help to prepare for the audit and wants you to continue doing her returns in the future. As you are preparing her records you see that she and her son are both members of the LLC.

What is due diligence in this case?

Is there a conflict of interest?

What do you do?

Sam and Sally Thompson come to you with a tax problem. They bring in a 90 day letter with a date of 1/10/2020. You understand that it is too late to try to resolve the issue before the last day to file in Tax Court. They are sure that the proposed \$30000 of tax is incorrect. You advise them that at this point, they need to file a tax court petition. They ask for your help.

What are the issues?

What do you tell them?

Your client, Helen comes to your office and asks if you can help her. She is getting married but she and her fiancé are worried about an IRS \$15000.00 tax debt she has from 2008. He does not want any ill effects to his finances from her debt. She has not heard from the IRS for years and forgot about it until her fiancé asked about potential problems.

What are the issues?

What will you do to help her?

Amanda Johnson, a schedule C client, has been a client for four years. She comes for her appointment on April 1 and proudly tells you of the fact that she incorporated last year and made an S election herself, all in June. You find that she has no payroll.

What are the issues?

Would do you do?

You have done the Wilson's joint return for 5 years. Sally and Jim come in to sign and pick up their return. Sally gets flustered and signs on the wrong line. Jim sighs, reaches out and slaps her hard. She cries out from the pain and shock. He tells her to go wait in the car and he'll deal with her later.

What are the issues?

What do you do?

Ethics

Thank you

- Pamela Jones has been your client for several years. For 2018, she brings you her two corporations. You see that one has a healthy profit, but the other has a bigger loss. The corporation with the loss is a holding company for buildings that the profitable company rents.
- QBI is a factor. If you can make the loss company not eligible for QBI, the client will win big, with a big QBI deduction.

What do you do?

What is due diligence in this case?