

An Adventure Through Ethics With Mr. Mal Practise

Why Always saying YES can be a Big NO NO!

By Angelene Wierzbic, EA, CTRS

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Background Morals & Ethics

Our childhoods and upbringings depict most of our moral code which is a huge part of ethics.

According to famed Psychologist Lawrence Kohlberg who helped found the Theory of Moral Development, we establish all our morals by **Age 9.**

**Making Ethical Decisions and Being Informed Help
Prevent Preparer Penalties**

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About the Author

Angelene Wierzbic is an Enrolled Agent and Certified Tax Resolution Specialist. She has spent over 19 years working along side Larry Lawler, John Witkowski and more recently LG Brooks on tax resolution cases.

At 9 years old she loved reading.

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ONCE UPON A TIME...

There was a newly licensed CPA named Mr. Mal Practise. After 5 years in college and the pressure of upcoming student loan payments, he took a leap into practicing by opening a firm with one of his colleagues, Ms. Imaida Oops.

They started the firm of Imaida Oops & Mal Practise after taking out some working capital from a bank loan to purchase a building, furnishings and cover start up costs.



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THE GRAND OPENING

The two prepared and opened the doors during the beginning of tax season. It was a quiet start, but the excitement mounted in the office as they heard the first jingle of the bell on the door as their first client walked in...

Mr. Mal Practise jumped from his desk to greet the new arrival. As they sat down, the new client introduced himself.



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THE CLIENT

“Good afternoon, my name is Mr. Shifty. My wife, Ms. Blame-Lesh couldn’t make it because she’s pickin’ up the kids from soccer, but I’d like you to do our taxes. We have 2 kids who live with us, but I also wanna claim my niece and nephew who live down the road. My sister has no income since she’s on social assistance. The kid’s father doesn’t file so it’s all good. Someone’s gotta claim them right...haha! Here’s everyone’s names, Social Security numbers, and dates of birth. Other than that, all I got is my W-2, but I have a favor to ask when you prepare my return...”

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THE FAVOR

“You see, I got this W-2 for the cash I earned, but I don’t think I should have to pay the government any taxes. I did have some withholdin’, but I think it’s against the US Constitution to tax people. So I want you to prepare my return not claiming any wages and get my withholdin’ back... And hey if you can get me back some of those child tax credits for my sister’s kids, I’ll split the extra refund 50/50. You might as well take your fees right out of there while you are at it too.”

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THE RETURN

After thinking about the request and the pile of upcoming student loan bills, Mal Practise agreed. He shrugged and thought to himself, well, the customer is always right!

He put together the return as Mr. Shifty requested ignoring the W-2 income, including the withholding, and picking up the CTC. He entered the bank account for Oops & Mal Practise to direct deposit his fees and 50% of the child tax credit out of the refund.

Mal Practise printed out the 8879 e-file form and had Shifty sign for himself and forge Blame-Lesh's signature. "Nice meeting you. Come by and pick up your return tomorrow." Mal Practise said as he shook Shifty's hand and escorted him to the door.

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What Would you Do?

- a. Prepare the return as Shifty requested
- b. Prepare the return but include the W-2 income
- c. Prepare the return and leave off the sister's kids
- d. Educate, apologize and send Shifty on his way without preparing the return if he would not comply with tax rules.

Polling Question

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A Moral Dilemma “The Customer’s Always Right”

- Isn’t always the Right Path
- The Problems with “YES” in this case



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A Moral Dilemma “The Customer’s Always Right”

- Does Mal Practise have to adhere to Circular 230?
 - Yes, Circular 230 § 10.8
 - Meets definition of a preparer
 - “Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund is subject to the duties and restrictions relating to practice”
- How many potential problems do you see?



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Questions, Questions, Questions...

- Who can Shifty actually claim?
- Is there really an issue with the W2?
- What about that Child Tax Credit?
- Has Mal Practise prepared a bad return?
- Can Mal Practise share the refund?
- What about that 8879 form, was the electronic filing handled properly?



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The Kiddies

Who can Shifty actually claim?

- His 2 children with proof

What about the niece & nephew?

- Do they meet Qualifying Child Requirements?
 - They do not live with t/p or spouse more than 50% of year
 - Not providing over 50% of their support
- Did Mal Practise have knowledge they did not meet these requirements?



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The Trouble with Knowledge...

- He should have known/researched
- Ignored known tax rules
- Going against rules can be deemed willful or blatant disregard
- Positions are known to be false
- Exposes Mal Practise to more serious penalties



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Credits, Credits Everywhere!

Do you see any issues in the preparation of the Child Tax Credit?

- No verification of the children
- Claiming additional dependents
- No Due Diligence per Form 8867 requirements
 - Only provided Social Security and date of birth information for all the kids



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Potential Exposure – 26 USC § 6695(g)

Failure to be Diligent in Determining Eligibility for Certain Tax Benefits

- Any person or tax preparer with respect to a return or claim for refund fails to comply with due diligence requirements imposed by the IRS with regards to determining eligibility for Head of household or other credits shall pay a penalty.
 - Child Tax Credit
 - Other Dependent Credit
 - American Opportunity Credit
 - Earned Income Tax Credit
- \$560 fine per failure up to \$2,240 per return or claim



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The Mysterious W-2

- Circular 230 – § 10.21 Knowledge of Client's Omissions
 - A practitioner retained by a client with respect to an IRS matter who knows that the client has not complied with the law or has made an error or omission on any return, document, affidavit, or other paper which the client submitted or executed under, must advise the client promptly the noncompliance, error, or omission. The practitioner must advise the client of the consequences as of such noncompliance, error, or omission.
- Does not including the W-2 count?
 - Is the W-2 actually wrong?
 - NO, Shifty is presenting a frivolous argument



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Frivolous Tax Submissions 26 USC § 6702

- (a) Civil Penalty for Frivolous Tax Returns
 - A person shall pay a penalty of \$5,000 if they files what proports to be a return of a tax imposed but does not have the proper information to be deemed a correct assessment of tax or on its face indicates the assessment is substantially incorrect and is based upon a position IRS identified as a frivolous argument



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Frivolous Tax Submissions 26 USC § 6702

- (b) Civil Penalty for Specified Frivolous Submissions
 - A person shall pay a penalty of \$5,000 if they take a position based upon a frivolous argument or reflects a desire to delay or impede the tax administration. Submissions can include:
 - Collection Due Process Appeals
 - Installment Agreements
 - Offers in Compromise
 - Taxpayer Advocate Requests
- Both taxpayers & practitioners can be subject to \$5,000 penalty



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Do You Think Mal Practise Acted Properly?

- a. Yes, he should follow all of Shifty's wishes
- b. No, he has to adhere to ethical standards and rules regardless of Shifty's wishes.

Polling Question

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The Return

- Has he prepared a proper return?
- Have things been omitted?
- Are there things claimed that shouldn't have been?
- Are there questionable items?

THESE ARE POTENTIAL BADGES OF FRAUD!



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IRS Badges of Fraud

- Omission of specific items while similar ones are included
- Omission of entire income sources
- Inability to explain lifestyle
- Concealment of bank accounts
- Multiple sets of records
- Including questionable items
- Failure to file returns for multiple years when t/p has income
- Cashing checks at other banks/ check cashing services
- Claiming fake deductions
- False entries



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US Tax Court Badges of Fraud

- Keeping double sets or records
- Making false entries or alterations
- False invoices or documents
- Destruction of books and records
- Concealing income or assets
- Failing to cooperate with authorities
- Filing false documents
- Providing False Testimony
- Offering implausible or inconsistent explanations



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Due Diligence



- Circular 230 – § 10.22 Due Diligence as to Accuracy
 - Exercise in preparing, approving and filing returns documents and affidavits with the IRS
 - Determine the correctness of oral and written representations to the IRS
 - Can rely on work product of others if the preparer used care in engaging, supervising, training or evaluating the person

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Where Due Diligence Falls Apart



- Did not prepare the returns with care
- Disregarded fundamental tax rules
- Knew that what was done was not correct
- Willfully took improper actions
- Recklessly prepared the return

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Standards for Tax Return Preparation



- Circular 230 – § 10.34 Standards with Respect to Tax Returns, Documents, Affidavits and other Papers
 - May not willfully, recklessly or through gross incompetence sign a return or claim for refund where the practitioner should have known it contains a position that lacks reasonable basis or is an unreasonable position without substantial authority (IRC § 6694(a)(2))
 - Willful attempt to understate the liability by disregarding the rules
 - Cannot advise a client to take these positions either
 - No positions on documents, papers and affidavits that are frivolous or done to delay or impede the IRS

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The 4 standards of review

Substantial Authority

- Application of Law & Facts to Circumstance
- The authorities for & against have been reviewed
- Not as strong of a position than more likely than not (over 50%)

Reasonable Basis (for disclosure)

- The law may possibly apply
- More than arguable position

Frivolous Positions

- Contrary to law and courts

More Likely Than Not

- Over 50% chance of approval
- Usually Pertains to Tax Shelters



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Do You Think Mal Practise Met the Requirements of Substantial Authority?

- a. Yes
- b. No

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Substantial Authority for the position

- Application of Law & Facts to Circumstance
 - Law for income: 26 USC § 61 – Gross Income Defined
 - (a)(1) Compensation for services including fees, commissions, fringe benefits and similar items
 - Law for dependents: 26 USC § 152
 - Dependent must meet relationship test
 - Reside with the taxpayer for more than 50% of the year
 - Meet the age requirements
 - Meet the support tests
 - Positions contrary to law
- The authorities for & against have been reviewed
- Not as strong of a position than more likely than not (over 50%)



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Did Mal Practise Prepare a Bad Return?

- Preparer Penalty Exposure:
- 26 USC § 6694(a) Understatement due to Unreasonable Position
 - If a preparer prepares any return or claim for refund which any part of the understatement includes a position which they knew or should have known was an unreasonable position (lacking substantial authority):
- Penalty is the greater of \$1,000 or 50% of revenue from preparing the return or claim for refund



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How Bad Were Mal Practise's Actions?

- 26 USC § 6694(b) Understatement due to Willful or Reckless Conduct
 - Any preparer who prepares a return or claim for refund which any part of the understatement of liability due to an unreasonable position shall be subject to
- Penalty is the greater of \$5,000 or 75% of revenue from preparing the return or claim for refund
- Willful or Reckless Conduct:
 - Conduct by a preparer which is a willful attempt to understate the liability or reckless or intentional disregard of the rules



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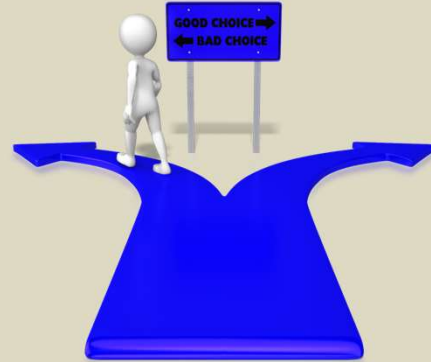
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Other Potential Exposure from Preparation

- 26 USC § 6701 Penalties for Aiding and Abetting Understatement of Tax Liability
 - Any person who aids or assists in, or advises with respect to the preparation or presentation of any portion of a return, affidavit, claim or other document which will be used on connection to revenue laws and that person knows it will result in the understatement of the liability may be subject to:
- Penalty of \$1,000



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Possible Exposure 26 USC § 7207

- §7207 Fraudulent returns statements or other documents
 - Any person who willfully delivers or discloses to the IRS any list, return, account statement or document known to be fraudulent or false as to any material matter
- Possible fine up to \$10K and/or 1 year in prison



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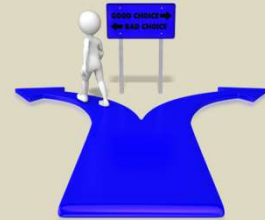
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Possible Exposure 26 USC § 7206

Fraud & False Statements

- (1) Declaration under penalties of perjury
 - Willfully makes and subscribes to any return, statement or other document which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct
- (2) Aids or assists others in fraudulent acts
- (3) Fraudulent bonds, permits and entries
- (4) Removal or concealment with intent to defraud
- (5) Compromises & Closing agreements
 - Concealing property
 - Withholding, falsifying or destroying records
- fine up to \$250K and/or 3 years in prison (Felony)



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Share the Wealth

What about the refund?

- Shifty offers to share..
- Depositing a portion into Mal Practise's business account...
- Are there potential issues or exposure from these actions?



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IRS Dirty Dozen: Unscrupulous Preparers

“People should be careful of shady tax professionals and watch for **common warning signs**, including charging a fee based on the size of the refund. A major red flag or bad sign is when the tax preparer is unwilling to sign the dotted line. Avoid these "ghost" preparers, who will prepare a tax return but refuse to sign or include their IRS Preparer Tax Identification Number (PTIN) as required by law. Taxpayers should never sign a blank or incomplete return.”



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Negotiation of Taxpayer Check

- Circular 230 Negotiation of Taxpayer Checks
 - §10.31 - (a) A practitioner may not endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect of a Federal tax liability.
- 26 USC § 6695(f) Negotiation of Check
 - Any preparer who endorses or negotiates (directly or through an agent) any check made in respect to taxes imposed issued to the taxpayer may be
- Subject to \$560 fine



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What About that Fee Structure?

- Circular 230 § 10.27(a) – Contingent Fees
 - Practitioners cannot charge contingent fees for services rendered in connection with any matter before the IRS.
 - Exceptions:
 - Audit of an original tax return
 - An amended return or claim for refund or credit made within 120 days of when the taxpayer was notified of examination or challenge to the original return
 - Abatement of penalties or interest
 - Judicial proceedings
- Mal Practise used a contingency fee structure
 - Getting a percentage of money saved from claiming kids



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Sign Here Please...

What about the 8879 form?

- Not having the actual signature of Blame-Lesh or
- Knowledge of Tacit Consent
- Did not Present the return at the time of signature



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What is Tacit Consent? IRM 25.15.19.2.4.1

Tacit Consent

- When one party gives silent approval of another signing on their behalf – based off factors
 1. Did spouse have filing requirement
 2. Prior year filing statuses
 3. Spouse provide W2 or other forms?
 4. Benefit such as CTC EITC
 5. Any other signatures
 6. Gain/losses of spouse
 7. Any other reason to file jointly (divorce decree, immigration?)



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Requirement to Furnish the Returns

- 26 USC 6695(a) Failure to Furnish Copy to Taxpayer
 - Any person or preparer who prepares a return or claim for refund and fails to comply with 6107(a) (person shall furnish a copy of the return or claim for refund no later than it is presented for signature) shall pay a penalty unless the failure is due to reasonable cause not due to willful neglect.
- Penalty \$55 fine per instance



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Should Mal Practise Have Allowed Shifty to Sign for Blame-Lesh?

- a. Yes
- b. No

Polling Question

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Preparation Pitfalls

The 6695 penalties

- (a) – Failure to provide a copy of tax return at time of signature (\$55 per instance)
- (b) – Failure to sign the return (\$55 per instance)
- (c) – Failure to include PTIN (\$55 per instance)
- (d) - Failure to retain copies of returns or a list (\$55 per instance)
- (e) – Failure to file correct informational returns (\$55 per instance)
- (f) – Negotiation of t/p refund check (\$560 per instance)
- (g) – Failure to be diligent in determining CTC, AOC, HOH, or EITC (\$560 per instance)

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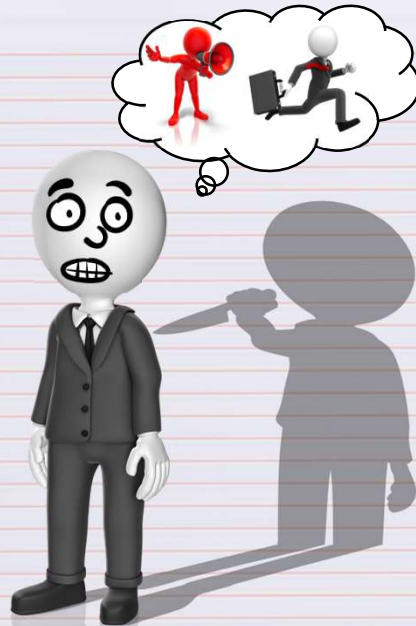
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THE SAGA CONTINUES...

Months after the returns for Mr. Shifty & Ms. Blame-lesh was filed, Shifty comes stomping in the door with an IRS notice in his hand.

"What did you do wrong! I gave you everything why are they charging me money!!" he exclaimed.



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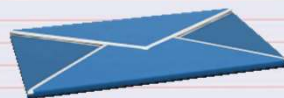
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THE NOTICE...

Mal Practise read the letter from the IRS. It is a CP2000 filled with adjustments. The IRS removed the dependency of the niece and nephew, added the wages, and removed a portion of the child tax credits relating to the niece & nephew.

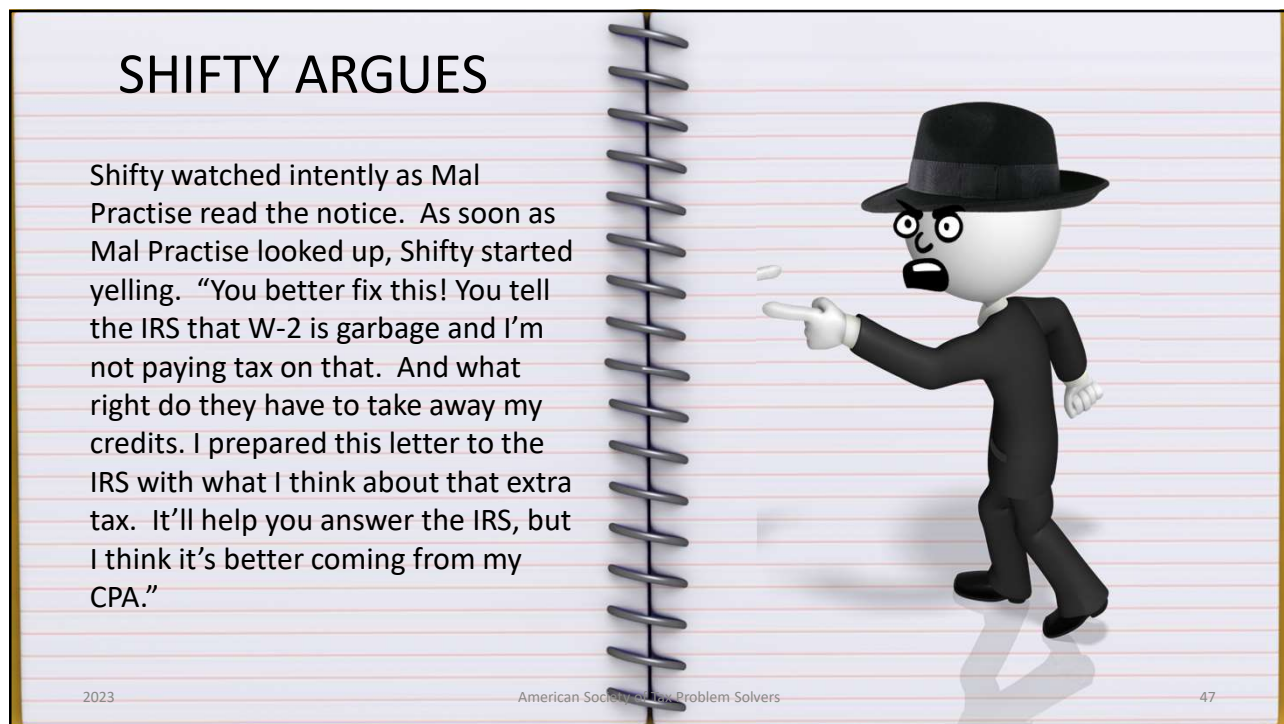


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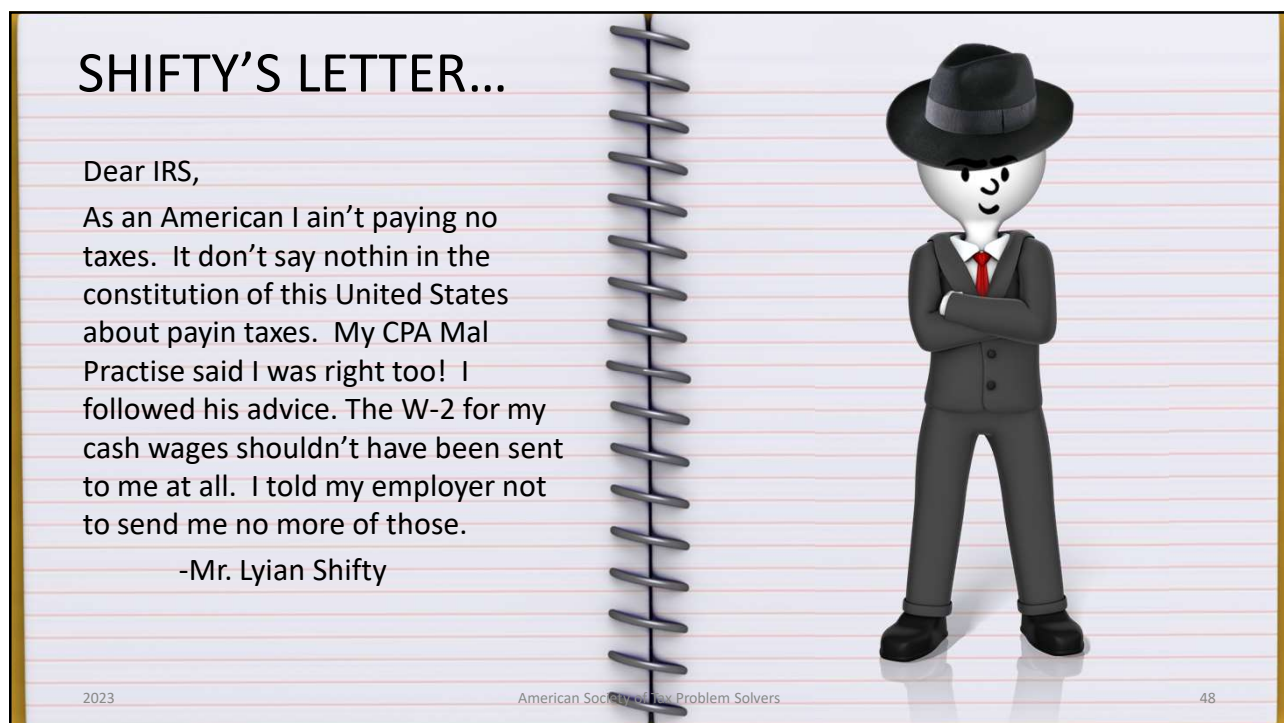
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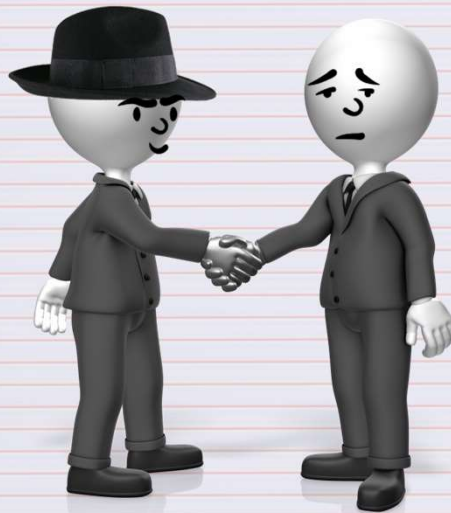
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THE AGREEMENT...

Mal Practise stuck his hand out to shake with Shifty. "Fine. I guess you're right and I have this all under control for you." He walked Shifty out the door, went back to his desk and drafted his response to the IRS. He based his letter on Shifty's response. He wrote his client has a firm belief that he does not have to pay taxes. After reading the rules on dependency, he realized maybe Shifty should not have claimed his sister's kids, but in good business the customer is always right!



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The Understatements

- The IRS issues CP2000 letters with proposed changes to the returns. The major issues to contend for Mal Practise:
 - Shifty did not have rights to claim his sister's children
 - W-2 income should be taxable



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Would You Have Submitted Shifty's Letter?

- a. Yes
- b. No

Polling Question

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The problem with the agreement...

- Basis of Shifty's letter is frivolous
 - By agreeing and including it Mal Practise is perpetuating the frivolous argument
- Can be subject to a \$5,000 penalty under 26 USC § 6702



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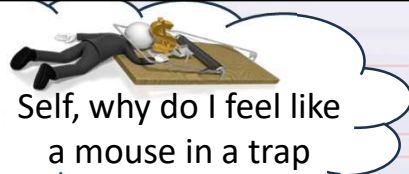
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REQUEST FOR PROOF...

In response to the letter, IRS requested proof the children reside with Shifty. Mal Practise called him, "Do you have records showing your sister's kids live with you?"

Shifty responded "Just try tellin' 'em at the IRS they have no right to nothin' dealin' with those kids. But a buddy of mine works at kid's school in the office. He can get me a letterhead so I can make a letter they live with me."

So Mal Practise followed Shifty's wishes asserting his client's privilege.



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MORE TROUBLE...

A little over a month later, a livid Shifty called Mal Practise. "You're my CPA, YOU were suppose'd to deal with the IRS! They sent a letter again with the same garbage and they want money." Shifty exclaimed.

Mal Practise sat back listening while Shifty continued to yell. After 5 minutes Shifty calmed enough for Mal Practise to speak. He recommended Shifty email over the notice so he could review it and respond.



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EMAIL ATTACHMENT

Mal Practise opened the email. It included a CP3219N "Notice of Deficiency" from the IRS. Mal Practise reviewed the form. The IRS didn't make any changes from the CP2000 request. "Now wonder why Shifty is mad" Mal Practise thought to himself. "I'm not sure what I can do with this, but I'll keep trying for him".

Department of the Treasury
Internal Revenue Service
P.O. Box 9013, Room 550
Holtsville, NY 11742-9013

03219N

Notice 3219N
Tax Year 2021
Notice date February 16, 2023
Social Security number XXX-XX-XXXX
To contact us 866-555-0000
Hours of operation 7:00 a.m. to 7:00 p.m. CT
Your caller ID
Last day to petition May 18, 2023
Tax Court
Page 1 of 10

LYMAN SHIFTY & SHELIA BLANKELEH
987 UNTRUTH RD
FREEBURG IL 60001-000

03219N

Notice of Deficiency
Increase in tax and notice of your right to challenge

We have determined that there is a deficiency
Excessed in our 2021 income tax

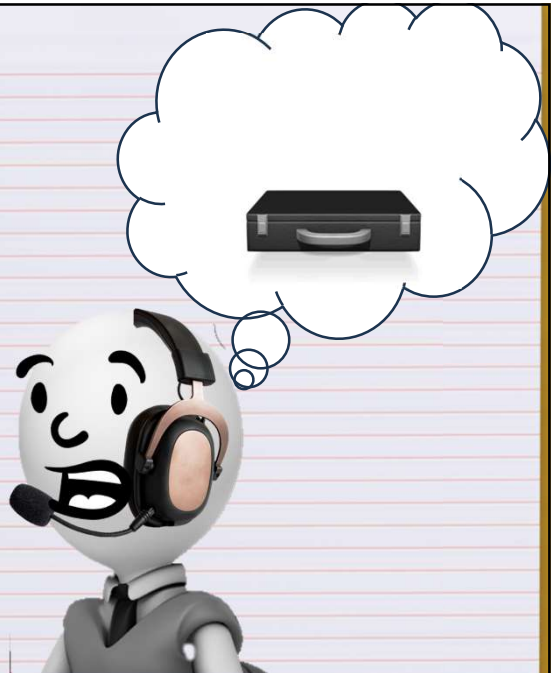
Summary

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IDEA

After reading the notice a few times, he decided "I have a great idea, I'll prepare and sign this Tax Court Petition form. How hard can it be!"

After a lot of confusion on how the form gets filled out, he decided that he needed some help.



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GETTING HELP

Mal Practise remembered he had an old family friend who was an attorney. He informed Shifty of his plan to bring in help and called the attorney.

The attorney, Ms. Disreputable, informed Mal Practise "Just so you know, I didn't retire from law, I got disbarred. Nobody wants to work with me anymore."

He told her "It doesn't matter to me, as long as we can get IRS to leave Shifty alone."



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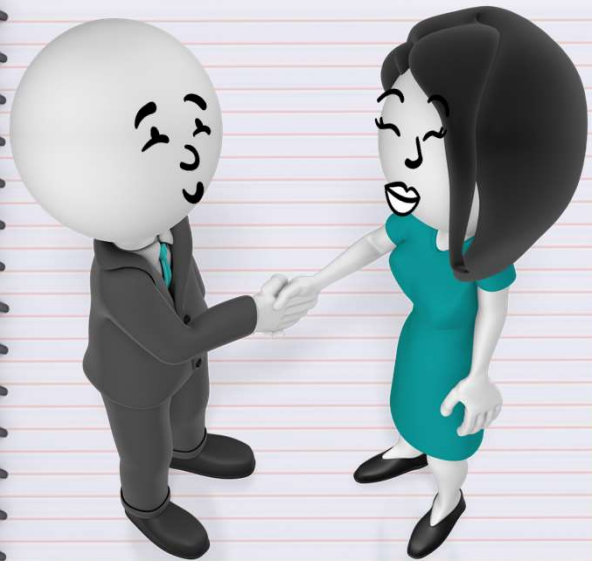
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NEW ATTORNEY

Ms. Disreputable studied the letters Mal Practise prepared. She said "I didn't know taxes, but I approve of your argument that cash wages shouldn't be taxed. Everyone earns cash under the table. Why does the government need to know! I'll help you BUT only if you can pay me with cash" Mal Practise dug cash from his wallet, and she prepared the tax court petition. She signed as counsel and told Mal Practise to sign as the petitioner and send a copy of his POA with it.



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GETTING RECORDS

Disreputable contacted Shifty to bring in all his tax documents again. She told him "This is just in case the IRS asks for anything during tax court." She reviewed the evidence Shifty provided for the case. At her instruction he gave all of his originals to her. She turned the documents over to Mal Practise as the two prepared for trial.



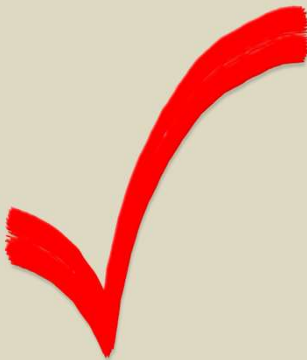
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What Mal Practise Did Right



- Circular 230 – § 10.35 Competence
 - A practitioner must possess the necessary competence to engage in practice before the IRS. Competence requires the appropriate knowledge, level of skill, thoroughness & preparation for what the practitioner is engaged to do.
 - Practitioners may become competent through various methods. It can be obtained through studying & consulting experts
- Mal Practise consulted & brought in an expert

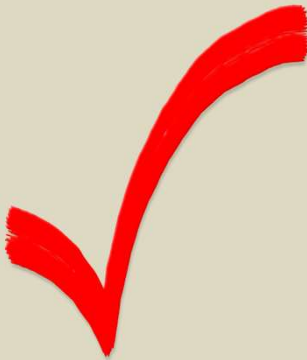
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What Mal Practise Did Right



- Circular 230 – § 10.32 Practice of Law
 - Nothing in the regulations may be construed as authorizing non bar members to practice law
- Mal Practise did not sign as the counsel

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The Oops on Asking for Help

- Circular 230 – § 10.24 Assistance from Disbarred or Suspended persons or Former IRS Employees
 - Practitioners can't accept assistance from disbarred or suspended practitioners, or
 - Accept the help of a former IRS employee who
 - Worked on the same for the IRS case previously
 - Assist a person who they worked on a prior case for the IRS with a different issue within a year
 - Firms can't represent in these situations without isolation of former IRS agent

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Delay

- Circular 230 – § 10.23 Prompt Disposition of Pending Matters
 - Practitioner can't unreasonably delay matters before IRS
- Is there the need to be filing the Tax Court Petition?
 - Based upon Frivolous Arguments & Unreasonable Positions
 - An attempt to delay the case



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Do You Think Mal Practise Has Delayed This Case?

- a. Yes
- b. No

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Wrong Stance Again!

They are still perpetuating the Frivolous argument

- Court has lower level of tolerance
- Take extremely serious
- Subject to higher penalties



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Elevating the Frivolous Arguments

26 USC § 6673(a) Tax Court Proceedings

- Whenever it appears to the Tax Court that proceedings have been started or continued primarily for delay, or the taxpayer's position is frivolous or groundless, or the taxpayer unreasonably failed to pursue administrative remedies
- Tax Court may impose penalty up to \$25,000



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JUDGE'S LETTER

Malpractice received a letter addressed from the court. He excitedly opened it hoping that the Judge approved the removal of the tax for Shifty. Instead, it was an unpleasant surprise.

The Judge sent a letter penalizing Mal Practise \$25,000 for making frivolous arguments and using the court case to delay the IRS from assessing the tax.

Mal Practise called Disreputable and read her the letter, she told him "The penalty's real."

Tax Court Judge

Mr. Mal Practise, CPA:

We are notifying you that you owe a penalty for a violation under IRC 6673(a) for utilizing this proceeding to delay, and for making frivolous and groundless arguments.

Penalty Imposed by the Court:
\$25,000.00

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RESPONSE TO SHIFTY

A few days later, Shifty called angry as ever. He received a response letter from IRS Chief Counsel. It stated that the petition is being used to delay assessment and it is founded on the frivolous argument that cash wages are not subject to taxes. It also requested the Judge discharge the case.

Besides the IRS response, a letter came from the Judge penalizing Shifty and Blame-Lesh for the frivolous argument too.

Justice is served!



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THE BLAME GAME

Shifty was irate on the phone “I’m gunna to make you pay that fine and the money IRS wants! If you don’t, I’ll report you to every government organization out there”.

In fear, Mal Practise tried to reason with Shifty telling him “I owe the same penalty too! Let’s not be hasty and start calling everyone. I’m not going to pay it, but I’ll try to deal with it so long as you don’t report me.”

Shifty agreed reluctantly.



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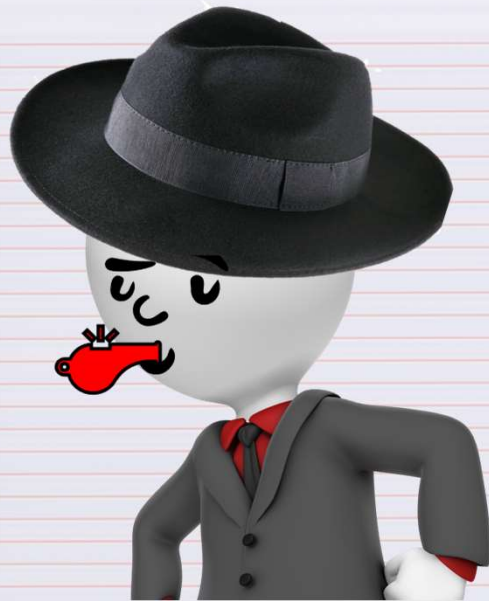
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BLOWING THE WHISTLE

Months later, Shifty received an IRS notice showing additional taxes due. “That Mal Practise is a BIG FAT LIAR!” he thought to himself. “I’ll show ‘em”. He paused and smiled an evil grin.

He grabbed his phone, searched the IRS website and discovered how he could report a bad preparer, and found that he can fill out papers as a whistleblower and IRS may give reward money too!



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What Can Happen from Shifty's Actions?

- Complaints expose Mal Practise to the Office of Professional Responsibility (OPR)
 - Mal Practise has made multiple mistakes which expose him to preparer penalties
- OPR will investigate the case to determine if they will pursue
 - OPR can begin proceedings to:
 - Sanctions - Censure, suspend or Disbar
 - Impose monetary penalties
 - Make a criminal referrals which may result in incarceration



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MEANWHILE...

After getting the mail and finding an IRS letter, Blame-Lesh asked Shifty what is going on. He instructed her that "I have it under control". Hearing those words alarmed her. After digging in Shifty's office she found a copy of the tax return. She decided to visit Mal Practise to ask what happened and why her name is on an IRS letter...



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BLAME-LESH

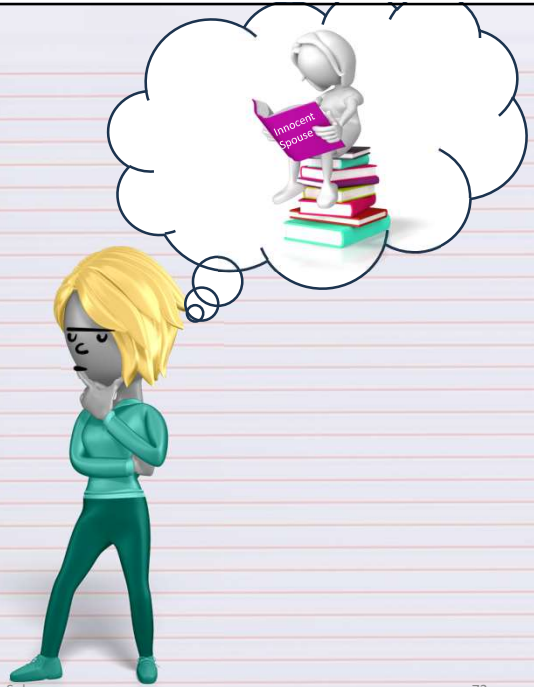
She explained to Mal Practise, "I'm a stay at home mom. I don't work. Shifty controls all the family finances since he has the job. He gives me a credit card to charge the groceries and necessary things for the kids. Besides packing his lunch and watching him leave for work each day, I have no idea what Shifty does or earns at work. He keeps that to himself."

In discussing the problems with Malpractice, she remembered watching a tv commercial which led her to read an IRS booklet on Innocent Spouse.

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AM I ELIGIBLE?

Blame-Lesh started meakly "Hey, I have an idea, I am not sure if it will work...and if my husband ever found out he would be so mad..." she proceeded to ask about her eligibility for innocent spouse.

After Googling, Mal Practise decided it may be a good option. She seemed to meet the requirements. He agreed to secretly prepare and submit the innocent spouse claim for her.

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SHIFTY IS PISSED OFF

With his power of attorney, Malprattise was notified the IRS received and was processing Blame-Lesh's Innocent Spouse claim. He also got another letter which was cause for concern. The IRS sent a letter to Shifty to provide his response to the innocent spouse request.

Later that afternoon, a fuming Shifty stomped into the office and started to scream....



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END OF THE LINE...

"Why did you help MY WIFE betray ME by fill out papers against ME! What gave you the right! You were MY CPA! We are through. Give me all my papers. I'm taking them to my lawyer!"

Realizing that he might be in trouble if a lawyer got involved, Mal Practise gathered his courage and said "NO WAY! I'm not giving you back on stitch of your paperwork. I'm holding it for good. All the letters, notices, and even your original W-2s. Too bad. I'm done being threatened!"



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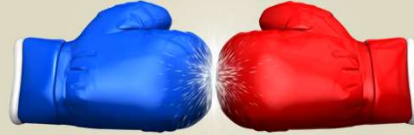
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Was There a Problem Representing Blame-Lesh?

- Circular 230 – § 10.29 Conflict of Interest
 - Practitioners cannot represent if the representation will cause conflicting interests.
 - Adversity to one or more of the parties
 - Representation causes limitations
 - Or reasonable belief conflict will arise
 - Representation prohibited by law
 - Can only represent if practitioner can competently represent all parties, they are notified of the conflict or potential conflict, and agree by signing a waiver no later than 30 days of the conflict's discovery



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Can Mal Practise Keep the Records?

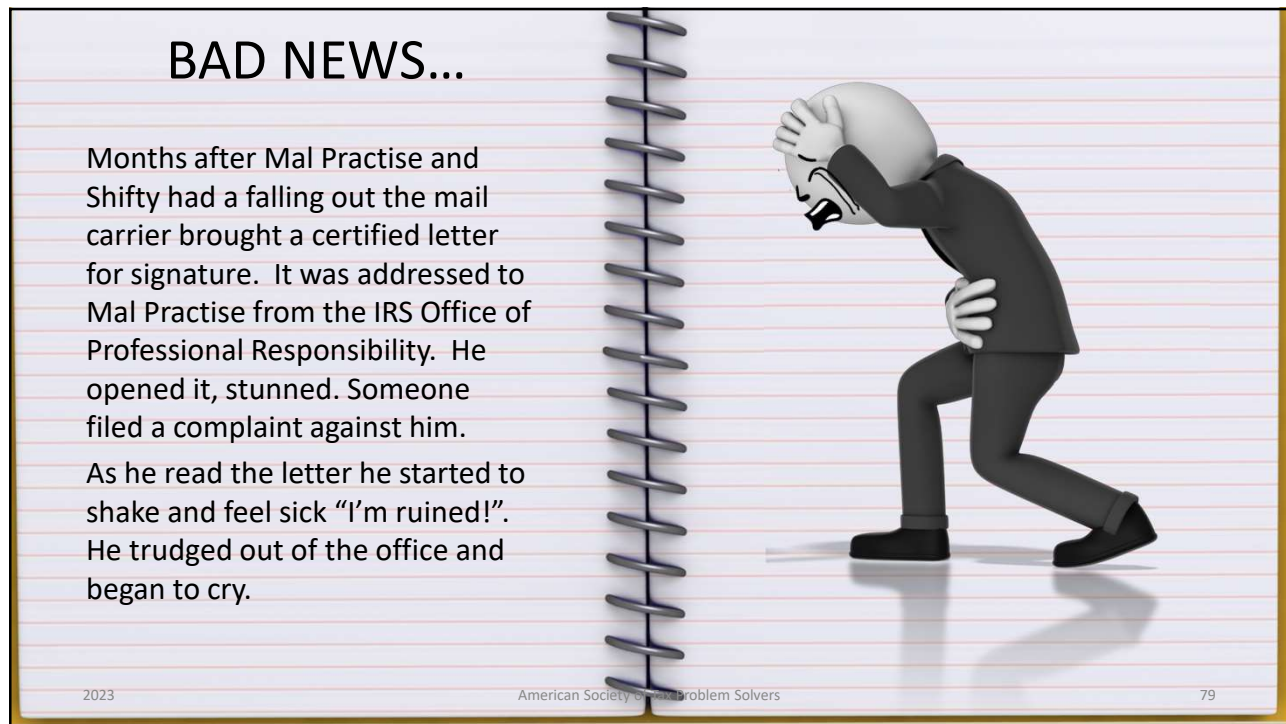
- Circular 230 – § 10.28 Return of Client Records
 - If client requests, must promptly return records necessary for federal tax obligations
 - Fee disputes do not waive this responsibility to return except:
 - Unpaid work product can be held if client did not pay and breached contract
- Records are:
 - Written or electronic materials provided to the practitioner
 - Obtained by the practitioner during the representation, or
 - That existed before representation

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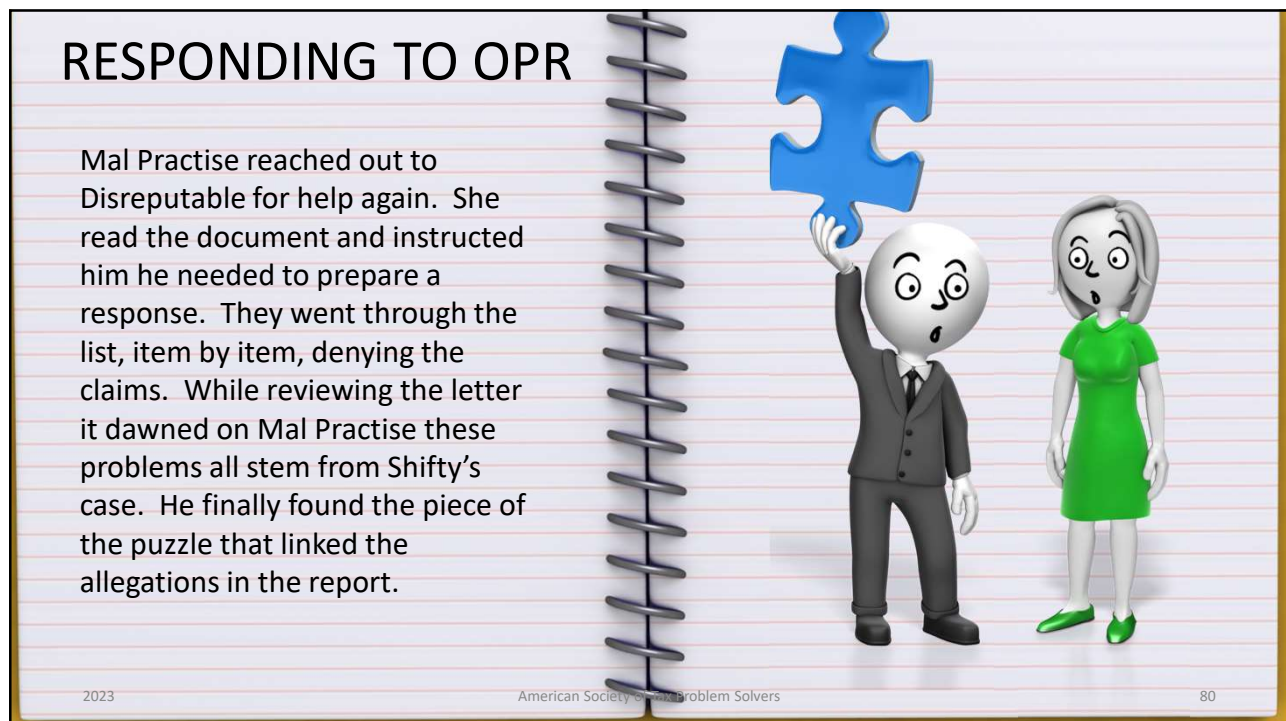
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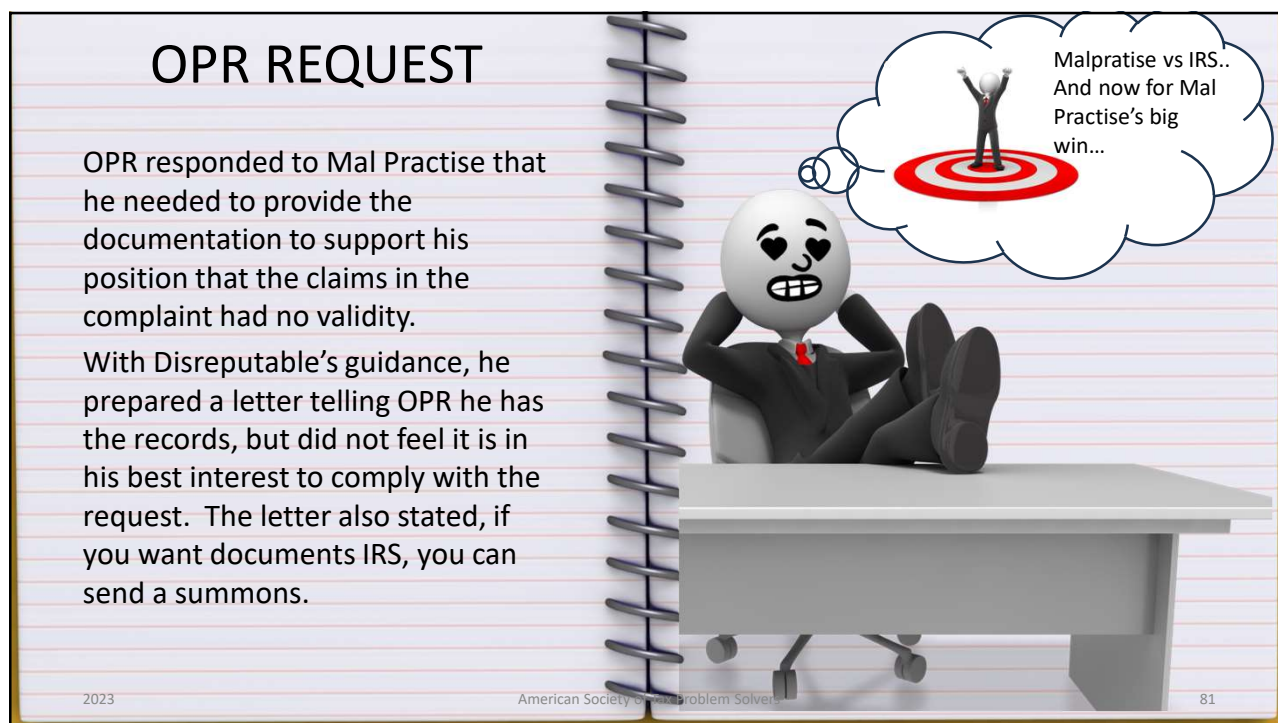
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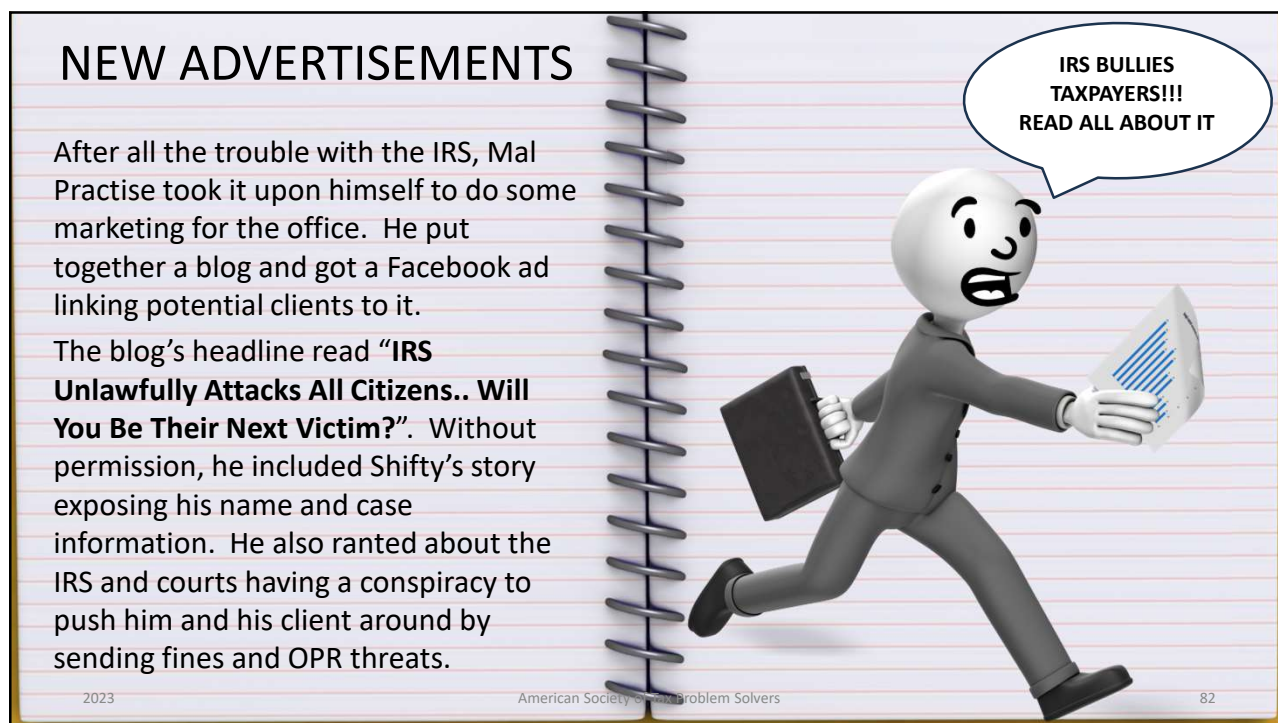
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INNOCENT SPOUSE

After the problems with Shifty's return and OPR, finally the mail had some good news. The IRS approved the Innocent Spouse claim for Blame-Lesh. She was no longer required to pay the debts incurred by Shifty's bad acts.



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Information

- Circular 230 – § 10.20 – Information to be Furnished
 - Practitioners have to respond to proper lawful request by IRS unless reason to believe information privileged
 - Submit information in practitioner's possession
 - Provide name of party holding the records to IRS, practitioner need not inquire
 - Must provide information regarding Circ 230 violations unless privileged
 - May not interfere with lawful IRS requests



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Privilege 26 USC § 7525

- Only taxpayer can deem things privileged
 - Practitioner cannot determine privilege
 - Cannot be used for information to prepare tax returns
 - Can be used for tax advice
 - Unless tax advice concerns a tax shelter
 - Only for non-criminal matters



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Solicitation

- Circular 230 – § 10.30 Solicitation
 - Practitioner's cannot in public or private communications containing
 - False, fraudulent, coercive, deceptive or misleading statements or claims
 - Cannot make oral solicitations if they violate federal/state law
 - Any fees must be advertised as
 - Fixed fee for routine items
 - Hourly rates
 - Range of fees for services, or
 - Initial consultation fees
 - Practitioner advertising with fees cannot charge more for at least 30 days from last ad
 - Practitioner cannot continue to contact perspective client after they have made it known they do not wish to be solicited to
 - Copies of advertisements must be kept for 3 years from the last print or transmission

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Disclosure

- 26 USC § 6713 – Disclosure or Use of Information by Preparers of Returns
 - Any preparer who discloses information furnished to them for or in connection with the preparation of a return and uses that information for any purpose other than to prepare a return
 - Subject to \$250 penalty per unauthorized disclosure or use of information given to prepare a return



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Criminal Disclosure

- 26 USC § 7216 – Knowingly or Recklessly Disclosure or Use of Information by Tax Preparers
 - Any practitioner who is engaged in the business of tax preparation and knowingly or recklessly discloses information in connection with the preparation of the return or uses return information in a manner besides for preparing the return may be subject to:
- Misdemeanor crime Fine of up to \$1,000 and/or 1 year imprisonment



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Criminal Disclosure

- 26 USC § 7213(a)(3) Unauthorized Disclosure of Information by Other Persons
 - It shall be unlawful for any person to whom return information is disclosed to, to print or publish it in any manner not provided by law. Violations are subject to:
- Felony crime fine of \$5,000 and/or imprisonment of 5 years



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Incompetence or Disreputable Conduct

- Circ 230 §10.51 Incompetence or Disreputable Conduct
 - Conviction of any criminal offense
 - Under Federal Tax Law
 - Involving dishonesty or breach of trust
 - At a felony level that renders practitioner unfit to practice before IRS
 - Providing known false or misleading statements or information to government employees
 - False or misleading solicitations



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Incompetence or Disreputable Conduct

- Failing to making a tax return or making one in violation of laws to avoid tax or participating in way meant to evade tax being assessed or paid.
- Assisting, counseling or encouraging a client to violate or suggesting to violate federal tax law or suggesting an illegal plan
- Failing to remit funds provided by the client to pay the government
- Attempting to influence through threat, false accusations, duress, or bribery
- Disbarment or suspension from practice by any federal court of board
- Knowingly working with someone suspension, disbarment, or ineligibility

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Incompetence or Disreputable Conduct

- Using abusive language, making false accusations, or publishing/circulating malicious or libelous information about IRS
- Knowingly, recklessly or incompetently giving false opinions or engaging in a pattern of incompetence
- Willfully failing to sign returns required by IRS
- Disclosure of taxpayer information or using a return in a manner not approved by tax code
- Willful failure to file information returns in a proper manner
- Preparing & signing returns without a PTIN
- Representing a taxpayer without authorization

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What OPR Can Do In This Case...

- Censure:
 - Public reprimand
 - Allows practitioner to continue practicing but OPR may look for higher standards of conduct from the practitioner in the future
- Suspend:
 - Practitioner is not able to practice during the length of the suspension
- Disbarred:
 - Practitioner is not eligible to practice for a minimum period of at least 5 years
- Monetary Penalties & Fines
 - Practitioner may be also subject to fines with any other reprimands

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What Do You Think OPR Should Do With Mal Practise?

- a. Censure
- b. Sanction
- c. Disbarment
- d. Put him behind bars

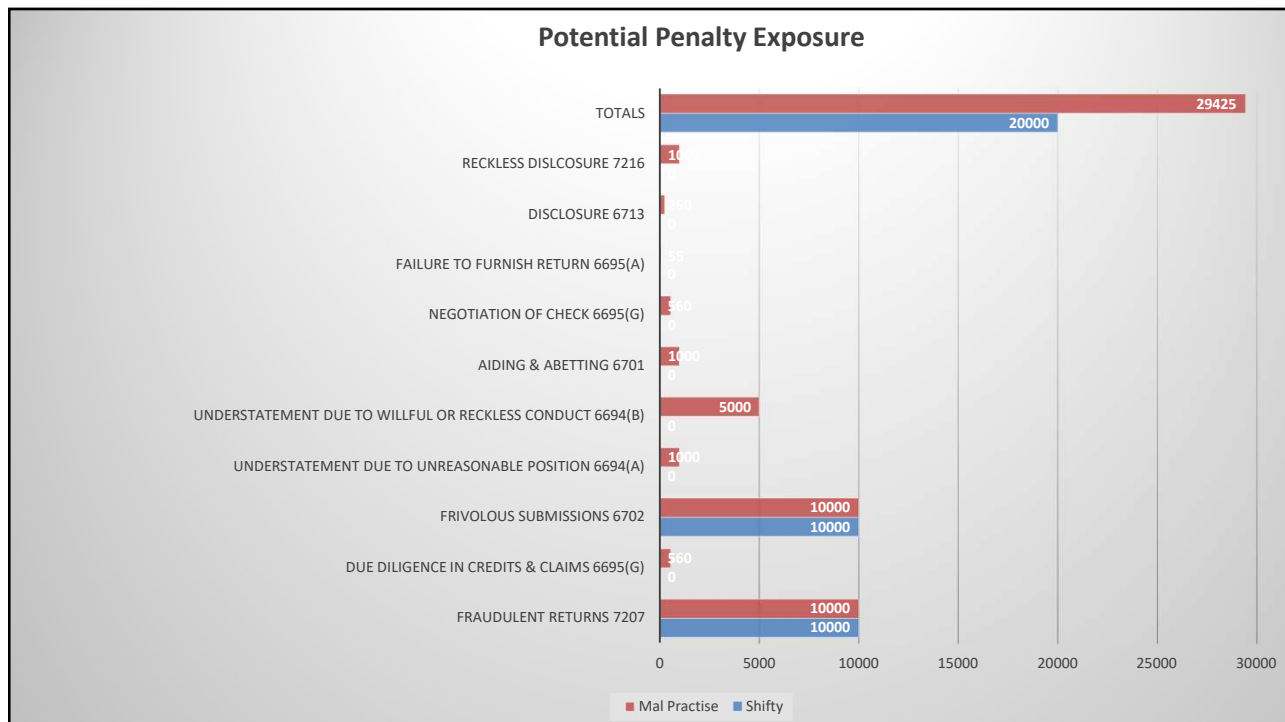
Polling Question

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WHERE ARE THEY NOW?

After years of issues with Shifty, Blame-Lesh decided she had enough. She moved away and started her own career. After seeing the IRS in action, she decided to get her EA and help people with tax issues...but not Shifty!

She runs a successful practice and has plenty of free time to spend with her growing children.

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WHERE ARE THEY NOW?

After helping Mal Practise, Disreputable realized she still loved the law.

Determined to do things right, she stopped dabbling and went back to studying.

In her spare time she wrote a self-help book about mending your ways and becoming a better professional under the pen name of Miss Reputable. It earned a position in Oprah's book club.

After a decade of waiting, she was approved for reinstatement as an attorney.



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WHERE ARE THEY NOW?

After a year of litigation, Mal Practise was found guilty of criminal fraud relating to the return he prepared for Shifty. Due to having so much blatant disregard for federal tax law, he was sentenced to the maximum 3 years in prison along with hundreds of thousands in restitution. He is serving his term and hopes to get out on good behavior.

Things aren't all bad, he made friends with former Worldcom CEO Bernard Ebbers who is serving time over his accounting scheme to defraud investors. They trade accounting tips.



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WHERE ARE THEY NOW?

With piles of debt from his IRS issues Shifty traded in his fedora for a more appropriate hat, a clown one. In an effort to make some extra money he works at a local circus show.

He's still looking for another representative to help him with his tax issues after getting Mal Practise in a heap of trouble. Practitioners beware, if you hear honking nose on the phone or someone tries to pay their fees in balloon animals...it might be Shifty.



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Moral of the Story

Follow the rules and don't let a clown client push you into doing something unethical!

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Did You Like the Storybook Format of this Class?

- a. Yes
- b. No
- c. I could care less, I just want CPE

Polling Question

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Takeaways...

1. As practitioners we need to adhere to circular 230 rules.
2. Circular 230 violations can lead to practitioner penalties or reprimand.
3. The punishments for practitioners are stricter than for the taxpayer.
4. Follow your instincts, don't let clients put you in a bad position.

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