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My Spouse Did What?!? Avoiding Ethical Pitfalls When Both Spouses Are Your Clients

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Beginning an Engagement



- Meet both spouses?
- Engagement letter
- Communication in initial meeting

AICPA 1.110, Conflicts of Interest

- [.04] The following are examples of situations in which conflicts of interest may arise:
 - e. Representing two clients at the same time regarding the same matter who are in a legal dispute with each other, such as during divorce proceedings or the dissolution of a partnership [...]
 - I. Providing tax or personal financial planning services for several members of a family whom the member knows to have opposing interests

National Association of Enrolled Agents – Rules of Professional Conduct

• (6) Members and Associates will not represent conflicting interests without express written consent of all parties after full disclosure.

Engagement Letter, Conflict Language

- Identify that dual representation presents potential conflict of interest because interests could become adverse
- Representative will perform services the further both interests and will not favor one to the detriment of the other
- Based on cooperation and understanding of facts, believe we can adequately represent both parties' interest
- Should actual conflict arise in the future, Representative will notify clients and determine whether parties can resolve conflict or seek other representation
- Communications between either party is not considered confidential and is available to other party

AICPA 1.700.030, Disclosing Information to Clients

• [.01] When a member is engaged by either spouse to prepare a married couple's joint tax return, the two spouses are considered to be one client, even if the member deals exclusively with one spouse. Accordingly, if the married couple is undergoing a divorce and one spouse directs the member to withhold joint tax information from the other spouse, the member may provide the information to both spouses, in compliance with the "Confidential Client Information Rule" [1.700.001], because both are the member's client.

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AICPA 1.700.001 Confidential Client Information Rule



 [.01] A member in public practice shall not disclose any confidential client information without the specific consent of the client.

National Association of Enrolled Agents– Rules of Professional Conduct

• (4) Members and Associates will maintain a confidential relationship between themselves and their clients or former clients, disclosing confidential information only when authorized or legally obligated to do so.

Return Preparation for Spouses

- Discuss filing options and consequences?
- Communication when questions arise?
 - Do both spouses have full access to underlying data/information?
 - What if something doesn't make sense?

Return Preparation for Spouses (ctd.)



- Obligation to confirm signatures on efiling authorization?
 - Send a copy to both spouses?
 - Confirm both spouses reviewed?
- What if one spouse is delinquent in providing information?

Return Preparation for Spouses

- What if they're contemplating divorce?
 - Going through a divorce?
 - Post-divorce?



Tax Return Audits

- Is there a difference between a new client and an existing client?
- What is your duty to communicate?
 - Audit Findings?
 - Options for responding
 - Do both spouses have to be on the same page?
- Penalty Relief

Cir. 230 § 10.29 – Conflicting Interests

- ...A conflict of interest exists if
 - The representation of one client will be directly adverse to another client;
 or
 - There is a significant risk that the representation will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by his/her personal interest.

Cir. 230 § 10.29 – Conflicting Interests

- But the practitioner may represent a client if
 - Able to provide competent and diligent representation to each client;
 - The representation is not prohibited by law; and
 - Each affected client waives the conflict of interest and gives informed consent in writing with 30 days.

An Audit Issue: Travel Expenses



- Wife (W) is self-employed and primarily responsible for the family finances. She is your primary contact for return preparation. You may have met Husband (H) at some point several years ago but have not had contact with him since.
- H+W's tax return is selected for audit and item #5 on the first Information Document Request is the substantiation for all of W's travel expenses.
- W calls you in a panic and asks you not to talk to H about the travel expenses. The travel expenses on the tax return are correct. However, only ½ of the travel expenses that show up on the joint credit card are work-related... the other half were incurred in connection with W's out-of-town affair.

Collection

- Preparing financial statements
 - If the liability is attributable to only one spouse?
 - If one spouse owns separate assets? As joint tenants (not tenants by the entirety)? In a separate trust?
- Review of financial statements and signing of financial statements

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Who owns what? Who owes what?



Spousal Representation in Collection Matters



- Trust Fund Recovery Penalties
- Asset Transfers
- Tax Liens and the titling of assets
- Identifying innocent spouse claims

A Collection Issue: TFRP, liens, and Conflicts Galore

- Husband (H) owes a tax liability related to a TFRP from a company he used to run. Husband and Wife (W) own several rental properties.
 The properties are titled as "joint tenants", meaning that H owns 50% and W owns 50%. The IRS files a lien against the rental properties for the TFRP tax liabilities.
- H and W visit you and ask you to negotiate-down the balance due with an Offer in Compromise. You think he is a pretty good candidate for an OIC. W mentions that they received a very lucrative offer on several of the rental property buildings and she wants to use her proceeds to buy some "swampland in Florida". Neither H nor W have any other available cash to make a down-payment on an OIC.

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Innocent Spouse

- Recognizing a claim for relief
- Advising a spouse to take action to bolster his/her claim
- Representing spouses before/after a divorce or separation
- Can you communicate with both spouses about a claim?

| § 1040 | U.S. Individual Income T |
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| For the year Jan. 1-Dec | c. 31, 2013, or other tax year beginning |
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Withdrawing

- Representative's obligations?
- How to best communicate withdrawal
- How to transition your files



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If you have questions, we're ready to help you find the answers.

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