Claudia Hill, EA, MBA is a nationally recognized tax professional and frequent lecturer on taxation of individuals, tax planning, and representation before IRS, including at IRS Tax Forums. She is editor-in-chief of the CCH, Inc., Journal of Tax Practice and Procedure. Hill has testified before both the Senate Finance Committee and House Ways and Means Committee. Hill served on the 1987 Commissioner’s Advisory Group to the National Office of the Internal Revenue Service. She is often called upon by the media for comments about tax issues. Hill was recently named a Top Ten Nominee by Tax Analysts for 2011 Person of the Year. She is an NTPI Fellow and Level 1 and Graduate Level in Representation instructor.
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Circular 230, Subpart B -- Duties and Restrictions Relating to Practice before the Internal Revenue Service, Section 10.33 Best Practices

(a) Best practices.

Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:

1. Communicating clearly with the client regarding the terms of the engagement. For example, the advisor should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

2. Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) 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, for example, whether a taxpayer may avoid accuracy-related penalties under the Internal Revenue Code if a taxpayer acts in reliance on the advice.

4. Acting fairly and with integrity in practice before the Internal Revenue Service.

(b) Procedures to ensure best practices for tax advisors.

Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning Federal tax issues or of preparing or assisting in the preparation of submissions to the Internal Revenue Service should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices set forth in paragraph (a) of this section.

Practice Pointer! Clearly, the best way to Communicating clearly with the client regarding the terms of the engagement is through the usage of engagement letters.

The IRS characterizes the above standards as "aspirational;" they are procedures that tax advisors "should" rather than "must" follow. Failure to comply with "best practices" does not automatically subject a practitioner to sanctions. However, failure may make it more likely that a practitioner might overlook one of the other, mandatory rules. In addition, some practitioners are concerned that these standards may be raised during any malpractice litigation.
**Best Practices Checklist**

Although each tax services firm is advised to review their own particular circumstances before adopting any procedural checklist, the following is prepared based on the "best practices" outlined by the IRS in Circular 230, section 10.33.

- Did I communicate clearly with the client regarding the terms of the engagement?
- Did I establish the facts, determine which facts are relevant, evaluate the reasonableness of any assumptions or representations, relate the law to the relevant facts, and arrive at a conclusion supported by the law and the facts?
- Did I advise the client on the consequences of the conclusions reached?
- Did I advise the client if relying on my advice will help the client avoid an accuracy-related penalty?
- Did I act fairly and with integrity when practicing before the IRS?
- Did I provide the client with the highest quality representation by adhering to best practices in providing advice and in preparing or assisting in the preparation and submission of documents to the IRS?
- Has the firm taken reasonable steps to ensure that procedures for all members, associates, and employees are consistent with the above best practices?

**Engagement letters** define the services the preparer or advisor is being engaged to perform; identifies engagement responsibilities of both the advisor and the client; explains fees, billing, and payment terms; and assures the client that additional services will not be initiated without advance approval. Engagement letters should be customized for the specific circumstances of the engagement (return preparation, audit, advice or research) and the needs of the organization.

Consider the following when creating engagement letters for your practice:

- Treasury Circular 230, Standards of Practice
- NAEA’s Code of Ethics and Rules of Professional Conduct
- AICPA Statements on Standards for Tax Services
- State law relating to disclosure of finance charges
- State Board of Accountancy rules regarding disclosure of outside processing, if applicable
- Value of signed confirmation of arrangements when dealing with complex matters, and

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1 See [www.accountantworld.com/taxlerrers/taxengagementletterexamples](http://www.accountantworld.com/taxlerrers/taxengagementletterexamples)
♦ Need for separate engagement letter, or separate language, for separate services (such as providing privileged tax advice, or preparing certain state returns)

**Protecting Your Client’s Right to Control Information Flow**

**Advisor-Client Privileges Against Disclosure**
IRC 7525(a)(1) extends the confidentiality privilege which exists for attorneys to tax advice given to taxpayers by federally authorized tax practitioners. An authorized tax practitioner includes non-attorneys authorized to practice before the Internal Revenue Service and includes Enrolled Agents, Enrolled Actuaries, and Certified Public Accountants.

Tax advice means any advice given by an individual with respect to a matter that is within the scope of the individual's authority to practice before the IRS. The privilege may be asserted in any non-criminal tax matter before the IRS and in any non-criminal tax proceeding in Federal court and may be asserted to the extent such communication would be considered privileged communication if it were between a taxpayer and an attorney.

The privilege does not apply to any written communication that (1) is made in connection with the promotion of any person's direct or indirect participation in any tax shelter, and (2) is made between a federally authorized tax practitioner and the person; any director, officer, employee, agent or representative of the person; or any other person holding a capital or profits interest in the person.

The privilege may be waived in the same manner as the attorney client privilege. If a taxpayer or federally authorized tax practitioner discloses to a third party the substance of a communication protected by the privilege, the privilege for that communication and any related communications is considered to be waived to the same extent and in the same manner as the privilege would be waived if the disclosure related to an attorney-client communication.

The Service must allow taxpayers to assert the confidentiality privilege in communications with a Federally Authorized Tax Practitioner. The taxpayer must assert the confidentiality privilege, it does not arise automatically. Tax return preparation does not come within the advisor/attorney client privilege.

**Practice Pointer!:** It is important to include details of how advisor-client privilege works in any controversy related engagement agreement, especially late-filed returns and audit representations.
EXHIBIT: CONFIDENTIALITY PRIVILEGE ENGAGEMENT LETTER

[Client Name/Address]

Subject: Confidentiality Privilege

The Internal Revenue Code, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998, extends a confidentiality privilege to qualified tax advice that we provide you as your federally authorized tax practitioners. In order to ensure that all communications between us that relate to tax advice are covered under the privilege umbrella of the Act, we are asking you to confirm the following arrangements:

We will provide tax advice to you as needed or requested to meet specific objectives or generally to meet long-term tax related goals and objectives. You have the right to review and/or be supplied with copies of any and all tax planning or research memos and work papers prepared by our firm related to such tax advice. Tax advice includes, but is not limited to, the following:

♦ Research to determine the income tax reporting of a particular transaction.
♦ Providing business tax advice and consulting to you, throughout 2011 for consideration in making tax-related decisions.
♦ Providing services related to the expected outcome of tax decisions.

Privileged tax advice does not include communications associated with the preparation of tax returns, tax accrual work papers associated with a financial audit or other financial statement engagement, communications associated with tax shelters, general business or accounting recommendations, or other non-tax engagements.

You may assert the confidentiality privilege in any non-criminal tax matter before the IRS or any proceeding in Federal Court brought by or against the United States.

We will not disclose any advice provided under the terms of this engagement letter to the Internal Revenue Service or third parties unless you instruct us to do so. Any disclosure of confidential information by you or us to the IRS or third parties may cause the Confidentiality Privilege to be lost. Both parties must take care that the privilege is not inadvertently waived. You should notify us of any requests by the Internal Revenue Service for information about any tax advice or tax advice documents provided to you under the terms of this engagement letter.

If you advise us to assert the Confidentiality Privilege on your behalf you agree to hold [Your Firm Name] harmless and indemnify us for any attorney fees and any other costs and expenses (including penalties) incurred by us in defending the confidential communication.

[Your Firm Name]____________

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2 From AccountantsWorld Tools: Engagement Letters www.accountantsworld.com Note: This privilege is only available for communications between the taxpayer and Enrolled Agents or Certified Public Accountants.
EXHIBIT: TAX PREPARATION ENGAGEMENT LETTER - LATE-FILED RETURNS
10413 Torre Avenue, Suite 500
Cupertino, CA   95014
408 446 4451 x 1153 Talk
408 973-8757 Fax
claudia@taxmam.com

By signing this statement, I acknowledge that:

• I have engaged Tax Mam, Inc./Tax Services Group for the preparation of personal income tax returns for the years 2007-2010.

• I understand that the return(s) will be prepared based on information and documentation I provide without independent verification by the preparer. I will make available information about all of my income and deductions so that substantially correct amounts of income and tax can be properly reported.

• I have been advised that failure to file tax returns may be a crime. As a minimum, late-filed tax returns carry with them potential for costly civil penalties. (And, in egregious cases, criminal prosecution.) Although my representative will work with me to determine the appropriateness of a request for abatement of any penalties on balances due, no guarantees have been made as to successful outcomes of such requests.

• I have been advised that upon assessment of any balances due IRS or any state agency, IRS or the agency may choose to proceed at whatever pace and manner they choose to secure payment of such balances. Fees paid for the preparation of these returns do not cover representation services for collection actions. However, Tax Mam, Inc. does offer such services, available in a separate engagement.

• I have been informed that anything I tell the return preparer during the interview for the preparation of my tax return is confidential, but not protected from the IRS. In addition, my preparer cannot disregard the implications of any information I provide in the process of preparing my return. Any of the work papers used to prepare my returns, as well as the communications between my representative and myself can be summoned by IRS in a legal action against me. If this is of concern to me, I will discuss this with legal counsel prior to engagement of the preparer.

• I will be provided with copies of the completed returns, and it will be my responsibility to review the documents carefully before signing them to verify that the information contained in them is true and accurate.

• A retainer of $1200 is acknowledged. Full payment of any balance due is expected at the time of completion and presentation of this work.

___________________________   __________________________
Taxpayer Signature & Date    Firm Signature & Date
EXHIBIT: EXAMINATION ENGAGEMENT AGREEMENT

10413 Torre Avenue, Suite 500
Cupertino, CA 95014
408 446 4451 x 1153 Talk
408 973-8757 Fax
claudia@taxmam.com

The purpose of this letter is to confirm that you have retained Tax Mam, Inc. for tax representation in connection with the examination of your 2009 individual income tax return, currently in process. This letter sets forth the terms and conditions upon which the undertaking is based.

Claudia Hill, EA will have primary responsibility for your matters along with other associates and paraprofessionals who may also be asked to handle specific matters. Our firm establishes hourly rates for members of its professional staff based on years of experience, specialization in training and practice, and level of professional attainment. The rate for Ms. Hill is $440/hour. You will be billed at our current hourly rates for all services.

Our initial engagement fee will be $1780; your deposit of $880 paid this date will be applied against this retainer. You will be billed as your case progresses. We will look to you for payment of our statements within 10 days of presentation. The above hourly charges for services do not include such items as travel, telephone calls, FAX transmissions, messenger services, postage, photocopying, and computerized tax research. In order to allocate these expenses fairly to those clients and matters for which they are incurred, these items will be separately itemized on all statements.

Either party shall be free to terminate this arrangement at any time. In such event you shall be responsible for all fees, expenses and disbursements incurred through the date of termination and we will work with you to effect an orderly transition of your matters. Any termination on our part will be consistent with the then applicable Code of Professional Responsibility.

Our services are rendered on the foregoing basis. If you have an objection to any of the foregoing or any questions, please discuss them with me. We highly regard your business and feel all aspects of our representation are appropriate subjects for discussion.

RECEIVED AND UNDERSTOOD: _________________________ Date: __________

AGREED: Tax Mam, Inc. by Claudia Hill, EA _________________ Date: __________
**Engagement Agreement, Supplement**

**General Information Regarding Audit Engagement:**

The initial phase of our engagement will involve review of the examination process to date. Based on our conversation, a statutory notice of deficiency may have been issued. If that is the case, you will need a formal legal response prepared or you will be required to proceed with a pro se petition in order to obtain an opportunity to discuss your case with an Appeals Officer. It may be necessary and/or advisable for you to obtain legal counsel to draft your petition. Further, in order to best understand your case, I will need to review all records you have provided the IRS and, to the extent possible, the workpapers the IRS agent has prepared. We will make a Freedom of Information request for those documents. If IRS has indeed issued a statutory notice, the documents we need may only be accessible under the formal legal process of discovery.

It is difficult to estimate the amount of time the finalization of your situation itself may require. As I indicated, it appears you will have two key issues: (1) the determination of the correct amount of tax and (2) requesting relief from joint liability, since the initial returns were filed jointly, and it appears your spouse may have failed to report income and overstated deductions. Be assured, we will spend no more time than is necessary to bring this examination to a reasonable conclusion. We will certainly keep you informed as the examination progresses as to the fees, so that you can make decisions to continue or not.

IRS agents generally believe they need to meet with the taxpayers at some point during the examination. Generally we find this is not necessary. If we, as your counsel, believe this is necessary, we will schedule that meeting after the examiner has had a chance to review the records and make some judgment calls in areas she finds of interest in your business records.

*It is important that you not communicate with the IRS examiner or agent after the power of attorney is signed. Please refer any calls you may receive from the agent to me immediately.*

After you have signed the engagement letter and power of attorney forms, we will make efforts to find the status of your case with IRS and then will schedule time for analysis of your position, and a recommendation of strategy.

**PLEASE NOTE:** Under §7525 of the Internal Revenue Code enrolled agents have a privilege of confidentiality which may be asserted in non-criminal federal taxation matters involving the Internal Revenue Service or the federal district courts. While the privilege does not cover disclosure of information considered in the preparation of a tax return or non IRS matters, it does cover tax advice communications made in confidence between you the taxpayer and me the Enrolled Agent in the course of an audit engagement.
If the Internal Revenue Service seeks to question you or me about our confidential tax advice communications, we may assert this privilege. Since the § 7525 confidentiality privilege is yours, you agree to advise me if you want me to assert this privilege to any questions or document requests made to me. As with other time and out of pocket matters, you agree to pay me for any costs I incur in defending the privilege, including my attorney fees, and to pay for my time at my usual professional rate. Consistent with this retention agreement and the privilege, if you have any concerns over possible criminal matters, you should discuss these immediately with an attorney.

Please feel free to ask any questions you have regarding the examination process.

____________________________________
Tax Mam, Inc.                                    Date

EXHIBIT: ENGAGEMENT AGREEMENT COLLECTION REPRESENTATION

10413 Torre Avenue, Suite 500
Cupertino, CA   95014
408 446 4451 x 1153 Talk
408 973-8757 Fax
claudia@taxmam.com

This letter confirms our meeting of January 12, and 15, in which you consulted Tax Mam, Inc./Tax Services Group relating to tax liability flowing from your recently filed (delinquent) personal income tax returns for the years 2008 and 2009.

You agreed to retain this firm to represent you before the Internal Revenue Service and if required, the Franchise Tax Board, Collection Divisions, relating to the above deficiencies, interest and penalties. **Claudia Hill, EA will have primary responsibility for your account.** Her hourly rate for professional services is $440.00. She may be assisted by other professional and support staff requested to work on your account. You will be billed at the hourly rate of each staff member that actually assists on your account.

You agreed to the following terms of engagement and compensation regarding our services:

The initial retainer of $1760.00 is a minimum fee to be applied toward our expenses, costs and professional services. “Expenses and costs” shall include, but not be limited to, photocopying, mileage, FAX charges, postage, filing fees, and IRS imposed user fees advanced. Although **this retainer is considered earned in full upon receipt, and is not refundable**, initial fees will be applied against it. When the retainer on hand falls below $330.00, we will re-bill you for an additional amount reflecting work in process. If we
are not paid within 10 days of billing, we reserve the right to cease all work and/or terminate our services.

In the event you fail to communicate with this office and this condition continues for ten business days, we reserve the right to terminate our services. You acknowledge that financial statements may have to be submitted to negotiate payment arrangements. You agree to promptly supply information and make appropriate financial disclosures as and when we request them.

Our engagement is limited to administrative hearings and administrative practice before the Internal Revenue Service and the Franchise Tax Board. Our services do not include any litigation in any state or federal court.

We agree to take all steps deemed by us to be advisable in any matter, including negotiation, compromise and settlement. You acknowledge that:

- We have made no guarantees of any kind regarding successful mitigation with any of the collection alternatives available.
- We have made no guarantees of any kind regarding negotiations, or installment payment arrangements, or compromises of tax liability.
- We have made no representations regarding the placement of liens or seizure of any realty or personal property.
- We have made no representations as to the imposition or release of any jeopardy or termination assessments.
- We have made no guarantees regarding the filing of any tax levies.
- We have made no representations that our services will result in relieving you of any liability for taxes, interest or penalties.
- All expressions relative to the foregoing are matters of our professional opinion only.

In the event an Offer in Compromise is made in order to compromise any federal or state tax liability, you acknowledged that the mere submission of an Offer extends the statute of limitations for the IRS’ collection of any tax liability by the period during which the offer is pending or the period during which any installment remains unpaid for one year thereafter.

In the event your case is being processed by the IRS Compliance Center or Automated Collection Services, you acknowledge that we have informed you that IRS personnel at such offices have the authority and ability to enforce collection through issuance of liens & levies virtually without warning.

If this agreement accurately summarizes your understanding of our engagement, please sign and return with your retainer, a copy of this letter. The additional copy is for your records. Please feel comfortable bringing any of your concerns about the progress of your case or about our procedures to our attention at any time.
PLEASE NOTE: Under §7525 of the Internal Revenue Code Enrolled Agents have a privilege of confidentiality which may be asserted in non criminal federal taxation matters involving the Internal Revenue Service or the federal district courts. While the privilege does not cover disclosure of information considered in the preparation of a tax return or non IRS matters, it does cover tax advice communications made in confidence between you the taxpayer and me the Enrolled Agent in the course of a collection engagement.

If the Internal Revenue Service seeks to question you or me about our confidential tax advice communications, we may now assert this privilege. Since the § 7525 confidentiality privilege is yours, you agree to advise me if you want me to assert this privilege to any questions or document requests made to me. As with other time and out of pocket matters, you agree to pay me for any costs I incur in defending the privilege, including my attorney fees, and to pay for my time at my usual professional rate. Consistent with this retention agreement and the privilege, if you have any concerns over possible criminal matters, you should discuss these immediately with an attorney.

Please feel free to ask any questions you have regarding the examination process.

__________________________  __________________________
TAX MAM INC./Tax Services Group   Date
Claudia Hill, EA, MBA

__________________________  __________________________
Taxpayer      Date

Circular 230, Subpart B -- Duties and Restrictions Relating to Practice before the Internal Revenue Service, Sec. 10.29 Conflicting Interests.

(a) Except as provided by paragraph (b) of this section, a practitioner shall not represent a client before the Internal Revenue Service if the representation involves a conflict of interest. A conflict of interest exists if --

(1) The representation of one client will be directly adverse to another client; or
(2) There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner.

(b) Notwithstanding the existence of a conflict of interest under paragraph (a) of this section, the practitioner may represent a client if --

(1) The practitioner reasonably believes that the practitioner will be able to provide competent and diligent representation to each affected client;
(2) The representation is not prohibited by law; and
(3) Each affected client waives the conflict of interest and gives informed consent,
confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the practitioner. The confirmation may be made within a reasonable period after the informed consent, but in no event later than 30 days.

(c) Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer or employee of the Internal Revenue Service on request.

EXHIBIT: CONFLICT OF INTEREST “INFORMED CONSENT” LETTER/SEPARATE REPRESENTATION³

<Date>
<Client A Name><Client A Address>

Our firm is currently/will be rendering the following services to you: <description of services>. During the course of rendering these services to you, our firm will also be rendering services to <Client B Name>. This letter will discuss certain ramifications of our firm’s proposed concurrent representation of both you and <Client B Name>. You have the opportunity to have your own legal representative review and advise you on all matters related to the services, including this letter, prior to signing the acknowledgment that this letter contains.

Rendering services to both you and <Client B Name> at the same time presents a potential conflict of interest. The potential conflict of interest arises because your interests could become actually adverse to <Client B Name>’s interests in the future. Therefore, our firm must perform its services in a manner furthering both of your interests, cannot favor one party to the detriment of the other, and cannot negotiate on behalf of either party with the other party.

Based upon both parties’ current cooperation and the preexisting relationship of the parties, we feel that our firms’ concurrent representation of both parties presents no actual conflict of interest and that as tax advisors, our firm can adequately represent both parties’ interests.

Should an actual conflict of interest arise in the future, our firm will promptly apprise you of any such actual conflict so that you and <Client B Name> can jointly decide how to resolve the conflict and/or whether you wish to obtain separate representation. Further, if you become aware of an actual conflict of interest, you agree to inform our firm of that

³ This exhibit is courtesy of CAMICO, the nation's largest CPA-owned mutual insurance company and second largest provider for accountants’ professional liability insurance and risk management services. www.CAMICO.com.
actual conflict immediately.

By signing below, you acknowledge that (1) the potential conflict of interest has been fully disclosed to you; (2) you understand and acknowledge the potential conflict of interest as described; and (3) you consent to the concurrent representation subject to the potential conflict of interest as disclosed.

____________________________
<Accountant Name> <Firm Name>
Approved:

<Client A Name> <Date>

EXHIBIT: CONFLICT OF INTEREST – JOINT RETURN DISCLOSURE
10413 Torre Avenue, Suite 500
Cupertino, CA   95014
408 446 4451 x 1153 Talk
408 973-8757 Fax
claudia@taxmam.com

Preparing returns for individuals who are contemplating dissolution of marriage or previously married to each other can involve inherent conflicts of interest for the person being asked to prepare the returns4. Before I can prepare your return, I have to have your acknowledgement of the following:

- You understand that I cannot place information on your return in conflict with information I use in preparing your spouse or former spouse’s return. Additionally, because our firm represents both parties, conversations or other communications between either party and our firm are not considered confidential and are available to the other party. In fact, our firm may be required to disclose any oral or written communications between our firm and one party to the other party.

- If you were still married on 12/31/2011, you have a choice of filing a joint or separate tax return for 2011; if there are dependents and you lived separately during the year, one of you may qualify for Head of Household while the other must file as married-filing-separately.

4 Treas. Dept. Circular 230 §10.29, Conflicting interests: A practitioner may not represent potential conflicting interests in his or her practice before the IRS unless the practitioner reasonably believes that the representation of any party before the Service will not be adversely affected; and all parties represented by the practitioner who have an interest in the matter before the Service expressly consent in writing to the representation after the practitioner has fully disclosed the potential conflict. Moreover, copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer or employee of the IRS on request. Finally, a practitioner may not represent a party in his or her practice before the IRS if the representation of the party may be materially limited by the practitioner's own interests, unless the practitioner reasonably believes the representation will not be adversely affected and the client consents after the practitioner has fully disclosed the potential conflict, including disclosure of the implications of the potential conflict and the risks involved.
• If you file joint returns, you are accepting joint and/or separate responsibility for any tax assessed on the returns. Be especially concerned if there is an unpaid liability on the final returns as submitted; you can be held separately liable for the full amount of the underpayment. If you have any questions about your potential liability, please ask.

• You will review the prepared returns and make sure you understand the information on them and assist us in assuring that all income has been reported.

• If jointly filed returns (from any year) are later challenged by IRS and any additional tax is assessed, each filer can be held liable for the full additional tax. You may want to make sure your dissolution agreement reflects that any additional tax for the 2011 year will be paid by the individual who generated the additional income. This will not prevent IRS from assessing the tax or attempting to collect it. However, the State of California does provide this mechanism as grounds for innocent spouse separation of liability.

• If we prepared joint returns for you that are later challenged by the IRS, we will not be allowed to represent either of you separately, and only able to represent both of you if we believe we can do so objectively and with written consent of both of you.

I need your positive response to the above request before I can proceed.

Signature & date:

_____________________________

Protecting Our Practices and Ourselves: Disengaging from problem or risky clients

Danger! Continuing to work with clients whose behaviors suggest there are problems with the quality of data they present, or who exert pressure on you to take positions on the return that may not be merited, or who place you in situations that make your stomach churn, can be hazardous to your business and yourself. The best course of action in response to such clients may be to disengage from providing their services.

Disengagement seeks to formally terminate the advisor-client relationship in a positive way, freeing each party to pursue other professional ties. Care should be taken, especially in situations where withdrawal takes place after the engagement has started. While conflict of interest situations will be a clear indication of need to disengage, sometimes the key issue to consider is the time and energy your firm spends on serving a particular client. Sometimes, working with certain clients is so disruptive and upsetting that it is simply not worth the money they bring into the firm. How wise is it to continue
a relationship with a client who makes you uncomfortable, upsets your staff, or otherwise exhibits unseemly behavior?

Suzanne M. Holl⁵, while a director of loss prevention services with CAMICO, suggests “Dealing right away with difficult behavior may save the relationship and help the firm avoid disengagement, or it may confirm that it is time to sever the relationship.”

When the firm decides to disengage, terminate the relationship professionally and formally, in writing. At a minimum, the disengagement letter should always contain the following:

- A clear statement that you are disengaging and the effective date of the disengagement (e.g., “We must formally end our relationship with you as your accounting firm effective immediately” or “as of (date).”)
- A description of any work that is in process or unfinished
- A statement of any due dates or filing deadlines that exist with regard to the work, whether finished, in process or unfinished.

Review and edit the letter carefully to ensure that it is professional, objective and rational. Don’t let it reflect personal feelings. When done effectively, disengagement can leave your clients feeling that you have acted in their best interests.

Our first example is from CAMICO, and illustrates disengagement when a client has notified the advisor or a pending divorce:

Dear <Client Name>:

As businesses grow and evolve, there are times when difficult decisions must be made. This is one of those decisions. Effective immediately, we will no longer be able to continue rendering tax and accounting services to you.

As you know, we have, in the past, been engaged by you and [name] to do your individual tax returns as well as <other work agreed upon>. Our reason for disengaging has to do with the potential conflict of interest that inherently exists if we were to continue to provide services to both of you due to the pending dissolution of your [marriage/relationship], as there may be situations in which one party will be benefited and the other will be negatively affected.

The following is a list of the services that you need to have performed in the next few months:

<List>

Your personal income tax return, Form 1040, is due <date>. Extensions can be filed until October 15, <year>. The <next> installment of your estimated tax payments <state form numbers> for <year> is due <date>.

⁵ Writing for NYSSCPA in May, 2003
We encourage you to retain a new tax advisor. We have enjoyed working with you and we wish you every continued success in the future. If you have any questions during the transition period, please contact us. We do not keep any original records; therefore, you should have all the records in your possession necessary to change to a new accountant.

Sincerely,

The following two letters are examples of disengaging from a client due to “problem behavior.”

Dear Ms Smith:

I wanted to personally follow up on your concerns about your 2009 return preparation fees. I’ve reviewed notes of your discussion with <staff preparer> as well as our own discussion to arrive at a position that’s fair to both of us. We try to provide competent services, reasonably priced. And I believe we have in your case…even to the extent that we are well under our own minimum fee schedule for the complexity of the return you presented.

Our <staff preparer> indicated that you seemed to place the fee issue as primary. That’s why I am returning the <$ > you felt was “excessive”. That should solve your problem.

To solve ours, I’m asking that you find a different preparer for your 2010 return. We will not be able to continue to provide you with quality services at reduced fees nor spend frustrating time afterward negotiating them.

Sincerely,

Dear Mr. Jones,

This is to inform you that, consistent with the terms of our original engagement agreement with you [and client’s business, if applicable], we have decided to terminate our [return preparation engagement, advisory or representation engagement].

Regrettably, the difficulty we have had in [communicating with you] [agreeing upon an appropriate course of action][obtaining needed documentation required to be responsive to IRS requests] has led us to conclude that it is necessary for us to terminate our relationship and for you to proceed with new advisors. Accordingly, we will no longer be rendering tax services to you and will
have no further advisor-client relationship. [Under separate cover we are notifying IRS to revoke the power of attorney we had previously placed on your behalf.]

To the extent you continue to need tax advisory services, we encourage you to retain new counsel. We will be pleased to assist in the transition of any matters or files to you or your new counsel, as you may direct. In the absence of any request, we will retain our files in accordance with our firm’s policy, which also provides that files may be destroyed in the future after notice to you.

We regret the circumstances that have necessitated this action, but we wish you every success in your future endeavors.

Very truly yours,

Conclusion

Today’s litigious society dictates businesses be sensitive to situations where protective disclosures are needed. A regulated profession further reinforces the need. The scope of representing taxpayers before the IRS has broadened significantly in the last five years. Until Office of Professional Responsibility came into being and Circular 230 was extensively revised (especially the August, 2011 final regulations extending coverage to all return preparers), practitioners generally had not perceived many aspects of the document to pertain to return preparation activities. Conflicts of interest are inherent in return preparation work; the nature of the process makes it almost impossible to avoid them.

The challenge facing return preparation and administrative representation practices will be in sensitizing professionals to know when conflict situations are likely to present themselves and developing processes to deal with them. That challenge will also involve creating the documents to permit disclosure when the tax professional determines to accept such engagements, meeting the regulatory requirements of the disclosures, explaining the parameters to clients and doing so while charging a fee acceptable to the clients requesting the work.