Domain 3 – Ethics, Practices, and Procedures

Domain 3 of this course is a general review the ethics, practices, and procedures for tax return preparers.

Sections in this domain include:

Domain Objectives
Understatement of Tax Liability
Prohibition of Negotiation of Taxpayer Refunds
EITC Due Diligence
Return Requirements for Preparers
e-File Compliance
AFSP Requirements
Skill Check

Domain 3 Objectives

Domain 3 of the Annual Federal Tax Refresher (AFTR) Course reviews important ethical and procedural guidelines for preparing individual tax returns.

After completing Domain 3, participants should be able to:

- Identify penalties assessed to tax preparers
- Summarize EITC due diligence requirements
- Name retention requirements for copies of tax return
- Recall e-file requirements
- Recognize preparer signature requirements
- Identify requirements of the AFSP
Understatement of Tax Liability

Paid Preparers

According to the IRS, “A paid tax return preparer is any person who is compensated for preparing or assisting in the preparation of all or substantially all of any U.S federal tax return, claim for refund, or other tax form submitted to the IRS (with a few exceptions).” All paid tax return preparers are required to register with the IRS and obtain a Preparer Tax Identification Number (PTIN) which must be renewed annually. PTIN applicants must be at least 18 years of age.

All paid tax return preparers are subject to the Internal Revenue Code (IRC).

Understatement of Tax Liability

Disreputable behavior by a tax return preparer is not tolerated by the IRC. Penalties will be assessed against tax return preparers for negligent or intentional disregard of rules and regulations, including willful understatement of tax liability under IRC 6694 (a) and 6694 (b).

A penalty can be assessed for each return or claim that shows an understatement of tax liability when the understatement was due to an “unreasonable position” – Code Sec 6694(a).

An unreasonable position is one in which:

- The return preparer knew (or reasonably should have known) of the position
- The preparer did not have a reasonable belief that the position would more likely than not (i.e. greater than 50% chance) be sustained on its merits
- The tax return preparer did disclose but had no reasonable basis for the position

According to IRC 6694(a), the penalty for understatement of liability due to an unreasonable position is the greater of $1,000 for each return or claim that shows such understatement or 50% of the income that the preparer receives (or will receive) for preparing the tax return or claim for refund.

Example: John, a tax preparer, prepares and signs Becky’s return. John received a fee of $1,100 from Becky for his tax preparation services. After the return is filed and reviewed by the IRS, it is found that there was an understatement of liability on Becky’s return due to an unreasonable position subjecting John to a penalty. Because 50% of his preparation fee would be $550 (50% of $1,100), John would be imposed a fee of $1,000 ($1,000 > $550).

Taking an unreasonable position does not always result in a penalty being imposed if the preparer showed a reasonable basis for the understatement, acted in good faith, or adequately disclosed the position.
Sometimes, an understatement of tax liability is due to the misconduct of the tax return preparer.

A penalty may be imposed IRC SEC 6694(b) if:

- There is an understatement of liability on a return or claim for refund due to a willful attempt in any manner to understate the tax liability by the preparer
- The preparer has recklessly or intentionally disregarded rules or regulations

The IRS 6694(b) penalty is the greater of $5,000 or 50% of the income derived by the return preparer for each return or claim for refund in violation. If a preparer has been assessed both 6694(a) and 6694(b) penalties for the same return, the 6694(b) penalty will be reduced by the amount assessed by 6694(a).

**Example:** Brian, a self-employed hairdresser, claims various business expenses. Upon review, James, the tax preparer, notices that Brian has included amounts paid for lawn service at his home as an expense. Even though James recognizes the expenses for lawn care should be deemed as personal and nondeductible, he still deducts them on Brian’s Schedule C and does not disclose the deductions as questionable. After an IRS review, a penalty imposed upon James for intentional and willful understatement of tax liability. James charged Brian a fee of $250 to prepare the return; therefore, James will be assessed a $5,000 penalty since it is greater than 50% ($125) of the income derived from the return.

**Prohibition of Negotiation of Taxpayer Refunds**

Under IRC 6695(f), tax return preparers are strictly prohibited from negotiating or endorsing of any federal tax refund check for a return that they prepared. A penalty of $500 is imposed for each such violation. Exceptions apply to tax preparation firms that are also financial institutions.

**Example:** Michael, a tax preparer, had his taxpayers’ federal tax refunds sent directly to him. He deducted the amount of his tax preparation fee from the proceeds of the refund, then gave the remaining funds to the taxpayers. Michael is in violation of IRC 6695(f) and is subject to a $500 penalty for each taxpayer refund he received.
**Due Diligence in Preparing Returns**

**EITC Due Diligence Requirements**

Tax return preparers who prepare any return or claim for refund that includes the Earned Income Tax Credit (EITC) must meet specific due diligence requirements. Failure to comply with due diligence requirements with respect to determining eligibility for, or the amount of EITC could lead to a $510 penalty for each such failure under IRC 6695(g). In addition to monetary penalties, return preparers or tax preparation firms can also face suspension or even expulsion from IRS e-file, other disciplinary action from the IRS Office of Professional Responsibility, and injunctions prohibiting the preparer from preparing tax returns or restricting the types of tax returns that may be prepared.

The IRS can also penalize an employer or employing firm if an employee fails to comply with the EITC due diligence requirements.

There are four basic due diligence requirements for preparers relating to EITC:

- Completing and Submitting the Eligibility Checklist – Form 8867
- Computing the Credit
- Knowing and Understanding EITC Rules and Regulations
- Keeping Records

**EITC Eligibility Checklist**

Paid preparers who prepare returns claiming the EITC are required to complete and submit Form 8867, Paid Preparer’s Earned Income Credit Checklist. This checklist helps the preparer consider all the eligibility criteria for claiming the credit.

Form 8867 is divided into five parts:

- **Part I** Eligibility requirements for all taxpayers
- **Part II** Eligibility requirements for taxpayers with a child
- **Part III** Eligibility requirements for taxpayers without a qualifying child
- **Part IV** Preparer’s due diligence requirements
- **Part V** Documents provided to preparer by taxpayer

Form 8867 should be completed based on information provided to the preparer by the taxpayer. Eligibility questions should be posed to taxpayers in language the taxpayer understands. Ask open questions to get more information than “yes” or “no.” At the time of the interview, preparers should document any additional questions that were asked of the taxpayer and their replies. Preparers must personally answer due diligence questions included on Form 8867, Part V.
For e-filed returns, Form 8867 must be submitted electronically. If a return is not e-filed, Form 8867 must be attached to any paper return that is prepared and filed. If a preparer prepares the return but does not submit it to the IRS, he or she must still provide Form 8867 to be sent with the filed tax return.

**Computing the Credit**

Preparers should complete the EITC worksheet. The EITC worksheet can be found in the 1040 instructions or Publication 596. Any alternative document with the same information can be used. Most tax preparation software includes the computation worksheet.

The worksheet shows all the items that should be included in the EITC computation including self-employment income, total earned income, investment income, and adjusted gross income.

**Knowledge Requirement**

Preparers should know the law regarding EITC and use their knowledge of the law to ask the appropriate questions to collect all relevant facts. Preparers should take into account the information the taxpayer provides and what the preparer knows about the taxpayer, and apply a common-sense standard. The preparer should not know or have any reason to know any information used to determine taxpayer’s eligibility or the amount of EITC is incorrect, inconsistent, or incomplete. It is the duty of the preparer to determine if the information is complete and to gather any missing facts. It is also important to recognize contradictory statements or statement known not to be true.

Preparers should also make additional inquiries if a reasonable and well-informed tax return preparer would know the information is incorrect, inconsistent, or incomplete. Additional questions asked and the taxpayer’s answers to the questions should be documented at the time of the interview.

**Example:** Ann, a tax preparer, is conducting an interview with her client Jeanie. Jeanie is 24 years old and single, but wants to claim two sons, ages 12 and 14 as qualifying children for EITC. Ann should ask additional questions about the sons because the ages of the children are inconsistent with the age of the taxpayer. Ann should document both the questions asked to Jeanie and Jeanie’s answers to the questions.
Record Keeping

Preparers must keep adequate records to satisfy EITC due diligence laws. Records can be kept either in paper or electronic format. A backup of the records should also be kept in a secure off-site location. Preparers should be sure that they can retrieve records at the IRS’s request.

Preparers should retain the following documents:

- Form 8867
- EIC Worksheet
- Copies of any documents provided by the taxpayer on which the preparer relied to complete Form 8867 or the EIC Worksheet
- Records of when, how, and from whom the information was obtained to prepare the return.

These above documents should be kept three years from the latest of:

- The due date of the tax return
- The date the tax return was electronically filed or if paper-filed the date the return was presented for the taxpayer’s signature
- The date in which the return is given to the signing tax return preparer (if non-signing preparer)

Self-Employed Individuals and EITC Diligence

It is important for return preparers to be diligent when performing EITC due diligence.

Preparer should carefully consider who is considered to be self-employed? An individual is considered self-employed if they carry on a trade or business with a profit motive as a sole proprietor or as an independent contractor.

It could also be an individual who performs services on a part-time basis or does occasional “odd jobs” and receives compensation for that work. These taxpayers don’t necessarily need a business name, or formal business structure to be considered self-employed. These individuals are required to report the income and related expenses from selling goods or performing services for others for money.
Why are Schedule C’s an EITC issue?

- The IRS estimates that between 22.1% and 25.9% of the EITC claims, or between $13.3 and $15.6 billion were paid in error in 2013.
- Income reporting errors are among the top three common EITC errors that account for more than 60% of the dollars paid in error annually.
- Approximately 21 million Schedule C forms are filed each year. Most of these represent small, often home-based businesses.

The most common Schedule C errors, which fall into the income category, noted on EITC returns are:

- Schedule C’s with losses or over-stated expenses to bring income down to qualify for EITC
- Inflated Schedule C income to maximize the amount of EITC
- Bogus Schedule C income to qualify for or maximize the amount of EITC

Some red flags for return preparers to watch for are:

- Schedule C income in round numbers
- Schedule C cash businesses as the only income claiming EITC
- Schedule C with little or no expenses when expense would be expected
- Schedule C taxpayers with little or no receipts for income and expenses
- Any Schedule C income that brings the taxpayer to the maximum EITC
- Schedule C without Form 1099

**PATH Act of 2015**

On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes (PATH) Act of 2015. The PATH Act addresses tax extender provisions, many of which expired at the end of the prior year. The bill retroactively extends expired individual, business, and energy provisions and makes many of them permanent.

The PATH Act also modified IRC 6659(g) to include a $505 penalty for failure to be diligent in determining if a taxpayer is eligible for the Child Tax Credit and the American Opportunity Tax Credit effective for taxable years after December 31, 2015.
Requirements for Copies of Tax Returns

Retention of Tax Return Copies

Tax return preparers who prepare any return or claim for refund should, for three years after the end of the return period:

- Retain a completed copy of tax returns or claims for refund or retain a list that has the taxpayer’s names and identification numbers for whom the returns were prepared
- Be able to make copies or lists available for inspection upon request

Preparers may be penalized for failure to keep copies of returns or lists under IRC 6695(d). A penalty of $50 for each failure will be imposed unless it is shown the failure is due to a reasonable cause and not due to willful neglect. The maximum penalty for failure to retain copies filed during a calendar year should not exceed $25,000.

Furnish Copy to Taxpayer

Preparers are required to furnish a completed copy of a return or claim for refund no later than the time the return is presented to the taxpayer for his or her signature.

Under IRS 6695(a), tax preparers shall pay a penalty of $50 for each failure to provide a copy of the return or claim for refund to the taxpayer(s). If the preparer can show the failure was due to a reasonable cause and was not due to willful neglect, the penalties could be reduced. The maximum penalty imposed upon a preparer for failure to provide copies of filed documents during any tax year is $25,000.

Furnish Preparer Identifying Number

Section 6109 (a)(4) requires preparers to furnish on tax returns and claims for refund an identifying number, specifically a Preparer Tax Identification Number (PTIN). This ensures proper identification of the return preparer, the preparer’s employer, or both.

Preparers who fail to provide their PTIN on the tax return or claim for refund are subject to penalty under Section 6695(c), unless the omission was due to reasonable cause and not willful neglect. A penalty of $50 for each failure will be imposed with a maximum of $25,000 with respect to a return period.

Return Signature Requirements for Preparers

Return preparers are also required to sign returns and claims for refunds they prepare. Failure to do so will result in a $50 penalty for each failure unless it can be shown that the failure was due to reasonable cause and not willful neglect. The maximum penalty assessed to a person is $25,000 in for documents filed during any calendar year.
e-File Compliance

e-File Mandate

Any tax return preparer who anticipates preparing and filing 11 or more Forms 1040 (including 1040A and 1040EZ) and 1041 during a calendar year must use IRS e-file to submit returns. There are some exemptions and preparers may seek approval of a hardship waiver.

In some cases, taxpayers choose to submit their return to the IRS themselves even if prepared by an IRS authorized e-file provider. In this situation, preparers should obtain and keep a signed and dated statement from the taxpayer documenting the taxpayer’s choice. Form 8948, Preparer Explanation for Not Filing Electronically, should be completed and attached to the taxpayer’s paper return.

If a preparer wishes to seek approval for a hardship waiver, Form 8944, Preparer e-file Hardship Waiver Request, generally should be filed with the IRS no later than February 15 of the year for which the waiver is being requested. Some reasons preparers may request a waiver include bankruptcy, financial problems, or the preparer is located in an area declared a Presidential Disaster Area. Hardship waivers are not commonly approved. The decision to approve a waiver is based on a preparer’s circumstances and is reviewed on a case-by-case basis. Requests for a hardship waiver based solely on personal desire of the preparer or the lack of computer or software will be denied.

Taxpayer Signatures for e-file

Both taxpayers and preparers must electronically sign returns submitted to IRS through e-file. Taxpayers must sign and date the Declaration of Taxpayer to authorize the electronic submission of the return to the IRS before it is transmitted. The Declaration of Taxpayer includes the taxpayer’s declaration under penalties of perjury that the return is true and correct. If any changes are made to the return after the taxpayers have signed the declaration that results in more than either $50 difference in total income or AGI or $14 to total tax, federal income tax withheld, refund, or amount owed, then the declaration must be signed again before the return can be transmitted.
For taxpayers, there are two methods of signing individual tax returns with an electronic signature. Both methods include the use of a Personal Identification Number (PIN) to sign the return and the Declaration of Taxpayer.

The methods are:

- Self-Select PIN
- Practitioner PIN

The Self-Select PIN requires the taxpayer to provide the prior year PIN and AGI amount. This method can be completely paperless if the taxpayer enters the PIN directly into the electronic return. Taxpayers can authorize EROs to enter the PIN on their behalf, in which case the taxpayer must sign a consent form after reviewing the return.

Some taxpayers are ineligible to use a Self-Select PIN, including primary taxpayers under age 16 who have never filed a return and secondary taxpayers under age 16 who did not file a prior year return.

Using the Practitioner PIN does not require the use of prior year PIN and AGI amount. A Practitioner PIN always requires taxpayers to sign a consent even if the PIN was keyed into the return by the taxpayer. EROs may select and enter a Practitioner PIN. Some tax software programs will automatically generate the PIN for the taxpayers.

An IRS e-file signature authorization is needed for both Self-Select PINs not keyed in directly by the taxpayer, and Practitioner PINs. Form 8879, IRS e-File Signature Authorization, authorizes an ERO to enter the taxpayer’s PIN on individual returns. Form 8878, IRS e-File Authorization for Application of Extension of Time to File, authorizes the ERO to enter the taxpayer’s PIN on Forms 4868 and 2350. Both Forms 8879 and 8878 include the Declaration of Taxpayer.

EROs must also sign tax returns with a PIN, which should be the same PIN throughout the entire filing season. EROs may authorize other members of their practice or firm to sign on their behalf, however, the ERO is still responsible for the return.

Forms 8879 and 8878 should be retained for three years from the return due date or the date the IRS received the return, whichever is later.
Timing of Filing

Once the return is signed, the Electronic Return Originator (ERO) must submit the return electronically as quickly as possible and ensure that stockpiling does not occur.

Stockpiling is either:

- Collecting returns from taxpayers and other authorized e-file providers prior to their acceptance to participate in IRS e-file, or
- Waiting more than three calendar days to submit a return to the IRS after obtaining all necessary information.

Returns held in early season before the IRS accepts any transmissions is not considered stockpiling, but the preparer must advise the taxpayers of the date the IRS will begin accepting returns electronically.

e-File Record Keeping

EROs must retain the following documents and records until end of the calendar year at the business address from which the return originated or at a location that allows the ERO to readily access the material:

- A copy of Form 8453, US Individual Income Tax Transmittal for IRS e-file Return, and supporting documents that are not included in the electronic records submitted to the IRS
- Copies of Forms W-2, W-2G, and 1099-R
- A copy of signed IRS e-file consent to disclosure forms
- A complete copy of the electronic portion of the return that can be readily and accurately converted into an electronic transmission that the IRS can process
- The acknowledgement file for IRS accepted returns.

The above records must be readily available upon IRS request during the retention period.

Forms 8878 or 8879 must be available in the same manner for three years from the return due date or the IRS received date, whichever is later. The Submission ID must be associated with Forms 8878 and 8879.

The Submission ID can be added to Forms 8879 and 8878 or the acknowledgement containing the Submission ID can be associated with Forms 8879 and 8878. If the acknowledgement is kept to identify the Submission ID it should be kept in accordance with the retention requirements for Forms 8878 and 8879.

Records may be either paper copies or in electronic format.
Documents Required for e-File

Tax preparers must not file a return prior to receiving Forms W-2, W-2G, or 1099-R. In the event that the taxpayer is unable to obtain correct Forms W-2, W-2G, or 1099-R, a return may be e-filed after Form 4852, Substitute Form W-2, Wage and Tax Statement or 1099-R Distributions from Pension, Annuities, Retirement, or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., has been submitted. Form 4852 must be completed in compliance with the use of that form. If Form 4852 is used, the non-standard W-2 indicator must be included in the record and the ERO must maintain Form 4852 in the same manner as Forms W-2, W-2G, and 1099-R.

Example: Jesse is very eager to file his 2015 tax return because he expects to receive a large refund. On January 31, 2016, he takes his last pay check stub to his tax preparer because he has not received Form W-2 from his employer. Jesse asks his tax preparer to file the return using the information on his last paycheck stub so he can get his refund as quickly as possible.

The tax preparer must not file Jesse’s return without Form W-2.

Rejected Returns

In some cases, the IRS may reject a return submitted through e-file. In many cases, the ERO or preparer can rectify the rejection quickly. If the rejection cannot be resolved, the ERO must take reasonable steps to inform the taxpayer of the rejection within 24 hours and provide the reject codes to the taxpayer. At such time if the taxpayer chooses to not have the return retransmitted electronically, or if the IRS cannot accept the return, the return must be paper-filed by the due date of the return or 10 calendar days after the reject is issued. A statement should be attached to the return explaining why the return is being filed past the return due date and noting that the return was originally timely filed.

Example: Zach has his 1040 prepared and e-filed by his local tax preparer on April 15. The preparer contacted him on April 16 and explained the return had been rejected by the IRS. The reject code referred to his dependent and the tax preparer told Zach his son had already been claimed as a dependent on someone else’s return. Since Zach’s son was not eligible to be anyone else’ dependent, Zach wanted to paper file the return. Since the due date of the return had passed, but the return was filed timely initially, Zach must attach a statement to the paper return explaining the rejection and noting the original date the preparer attempted to e-file the return.
Incompetence and Disreputable Conduct

Competence is addressed in Circular 230, Subpart B, §10.35.

§ 10.35  Competence.

(a) A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. A practitioner may become competent for the matter for which the practitioner has been engaged through various methods, such as consulting with experts in the relevant area or studying the relevant law.

(b) Effective/applicability date. This section is applicable beginning June 12, 2014.

It is expected that paid tax return preparers be competent for the engagement that they are involved with. For example, a tax return preparer who has limited experience and knowledge to only prepare simple individual returns may not be competent to prepare a return that contains more sophisticated issues. This regulation makes it clear that a tax return preparer must be competent. There are several methods of obtaining knowledge to increase competence, such as, researching tax law, taking tax courses, and participating in relevant webinars, to name a few.

On the other hand, there is a price to be paid for incompetence and disreputable conduct. Attorneys, CPAs, Enrolled Agents, and unenrolled return preparers who take part in “disreputable conduct” may be suspended or disbarred from practice before the IRS.
Circular 230, Subpart B, §10.51, provides a list of 18 separate ways that a tax return preparer can be incompetent or disreputable. It is important that each individual who prepares a tax return understand what types of actions constitute incompetent and disreputable conduct.

1. Conviction of any criminal offence under Federal tax laws.
2. Conviction involving dishonesty or breach of trust.
3. Conviction of a felony under federal or state law that renders a practitioner unfit to practice.
4. Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury.
5. Solicitation or use of false information to procure employment or intent to deceive.
6. Willfully fail to file a federal tax return or evade taxes.
7. Willfully assist in an illegal plan to evade federal taxes.
8. Misappropriate or fail to promptly remit client payment for taxes and other obligations.
9. Attempt to influence official action by use of threat, false accusations, duress, or coercion by bestowing a gift or favor of any value.
10. Being disbarred or suspended from practice.
11. Knowingly aid a person who has been suspended or disbarred.
12. Use abusive language or file false statements.
13. Giving a false opinion that is knowingly misleading, illegal, fraudulent, or incompetent.
14. Willfully fail to sign tax returns prepared.
15. Willfully disclosing information from returns prepared.
16. Willfully failing to file electronically.
17. Willfully preparing returns without having a PTIN.
18. Willfully representing a taxpayer with authorization to do so.

**Sanctioning**

If tax return preparers or EROs violate IRS e-file requirements, they could be subject to sanctions. Sanctioning may include a written reprimand, suspension, or expulsion from participation in IRS e-file, or other sanctions. Infractions are considered to have different levels depending of the seriousness of the violation. Sometimes a written warning may be given prior to sanctions but is not required.

Suspended providers are usually ineligible to participate in IRS e-file for a period of one to two years but may reapply. The IRS may publish the name of the entity or person suspended, expelled, or revoked from participation in IRS e-file.
Annual Filing Season Program (AFSP)

AFSP Overview

The Annual Filing Season Program (AFSP) is a voluntary program which aims to recognize non-credentialed tax return preparers who aspire to a higher level of professionalism. Tax return preparers who complete the requirements of the program will earn the AFSP – Record of Completion. Preparers who complete all the requirements will also be included in the IRS Directory of Tax Return Preparers and Select Qualifications, where taxpayers can search for qualified tax return preparers in their area.

The directory includes the name, city, state, ZIP Code, and credentials of all attorneys, certified public accountants (CPAs), enrolled agents, enrolled retirement plan agents (ERPAs), and enrolled actuaries with valid PTINs. It also includes information on individuals who received an AFSP – Record of Completion.

AFSP Requirements

In order to earn the AFSP – Record of Completion, participants must:

- Obtain necessary continuing education before December 31, 2016 including
  - A six hour Annual Federal Tax Refresher (AFTR) course and exam
  - Ten hours of other federal tax law topics
  - Two hours of ethics
- Have an active PTIN for the year of participation
- Consent to adhere to specific obligations in Subpart B and Section 10.51 of Circular 230

Some preparers may be exempt from the AFTR course. Publication 5227 outlines all the requirements as well as the exemptions from the AFTR course. Please note that Enrolled Agents are not allowed to earn CE credit for the AFTR course.
Continuing Education for the AFSP

The continuing education credits required in order to earn an Annual Filing Season Program (AFSP) Record of Completion are displayed in the following table.

<table>
<thead>
<tr>
<th>AFSP Exemption Status</th>
<th>AFTR Course &amp; Exam</th>
<th>Tax Law Update</th>
<th>Federal Tax Law</th>
<th>Ethics</th>
<th>Total CE</th>
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</thead>
<tbody>
<tr>
<td>Non-Exempt</td>
<td>6</td>
<td>-</td>
<td>10</td>
<td>2</td>
<td>18</td>
</tr>
<tr>
<td>Exempt</td>
<td>-</td>
<td>3</td>
<td>10</td>
<td>2</td>
<td>15</td>
</tr>
</tbody>
</table>

Other tax return preparers who desire to earn an AFSP Record of Completion must complete the CE listed in the Non-Exempt row of the table unless they are exempt from the Annual Federal Tax Refresher (AFTR) course and test requirement. If that is the case, they must complete the CE requirements listed in the Exempt row of the table.

Preparers Exempt from the AFTR

The following unenrolled preparers are exempt from the AFTR course and test requirement because they have passed other recognized state or national competency tests covering federal tax matters:

- RTRPs: Anyone who passed the Registered Tax Return Preparer (RTRP) test administered by the IRS between November 2011 and January 2013
- Participants in established state-based return preparer program with testing requirements: Return preparers who are active members of the Oregon Board of Tax Practitioners and/or the California Tax Education Council, and return preparers who pass the examination of the Maryland Board of Individual Tax Preparers (when available)
- SEE Part I test-passers: Tax practitioners who have passed the Special Enrollment Exam (SEE) Part I within the past two years, as of the first day of the upcoming filing season
- VITA volunteers: Quality Volunteer Income Tax Assistance (VITA) program reviewers and instructors with active PTINs
- Other accredited tax-focused credential HOLDERS: Tax practitioners who have passed the Accredited Business Accountant/Advisor (ABA) exam or the Accredited Tax Preparer (ATP) exam offered by the Accreditation Council for Accountancy and Taxation

Please view the CE Chart for detailed information for CE requirements.
<table>
<thead>
<tr>
<th>Return Preparer Categories</th>
<th>Description of preparer category</th>
<th>Annual Federal Tax Refresher (AFTFR) Course &amp; Test</th>
<th>Tax Law Update CE Credits</th>
<th>Federal Tax Law CE Credits</th>
<th>Ethics CE Credits</th>
<th>Total CE Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. AFTFR Course Exempt Preparers</td>
<td>State based return preparer program participants</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oregon Board of Tax Practitioners</td>
<td>Return preparers who are currently registered with Oregon</td>
<td>N/A (Exempt)</td>
<td>3</td>
<td>10</td>
<td>2</td>
<td>15</td>
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<tr>
<td>California Tax Education Council (CTEC)</td>
<td>Return preparers who are currently registered with CTEC</td>
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<tr>
<td>Maryland State Board of Individual Tax Preparers</td>
<td>Return preparers who have passed the Maryland examination and/or are currently registered with Maryland</td>
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<td>2. Organization based return preparer program participants</td>
<td>Former IRS Registered Tax Return Preparers</td>
<td>Return preparers who passed the RTRP test</td>
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<tr>
<td>IRS Special Enrollment Exam (SEE) Part 1</td>
<td>Tax preparers who have passed the Special Enrollment Exam Part I within the past two calendar years, i.e., for Filing Season 2017, return preparers must have passed within calendar years 2015 or 2016</td>
<td>N/A (Exempt)</td>
<td>3</td>
<td>10</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>IRS Volunteer Income Tax Assistance (VITA) Volunteer</td>
<td>VITA quality reviewers, instructors and preparers who pass the basic and/or advanced VITA examination with active FTINs</td>
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</tr>
<tr>
<td>Accreditation Council for Accountancy and Taxation (ACAT)</td>
<td>Return preparers who hold either an Accredited Tax Preparer (ATP) or the Accredited Business Accountant/Advisor (ABFA)</td>
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</tbody>
</table>

2. Non-exempt preparers – AFTFR Course REQUIRED

- Non-exempt or non-credentialed preparer

All other non-credentialed return preparers who do not meet one of the exempt categories listed above

6 hour AFTFR course and test is required annually

N/A | 10 | 2 | 18

3. Credentialed preparers – AFTFR Course Exempt

- Certified Public Accountant (CPA)

Exempt as long as preparer holds current credential

N/A (Exempt) | 3 | 10 | 2 | 15

- Attorney

- Enrolled Retirement Plan Agent (ERPA)

N/A (Exempt)

Note: If an Enrolled Agent opts to take an AFTFR course, they will not receive credit toward their Enrolled Agent CE requirements

3 | 10 | 2 | 15
Circular 230 Consent

AFSP Participants are required to consent to adhere to certain provisions of Circular 230. Before the AFSP Record of Completion is issued, participants are required to consent to the following statement:

*I agree to abide by the duties and restrictions relating to practice before the IRS in subpart B and section 10.51 of Treasury Department Circular No. 230 for the entire period covered by the Record of Completion.*

*I understand that failing to comply with the duties and restrictions relating to practice before the IRS in these sections may result in the revocation of my Annual Filing Season Program – Record of Completion, and I may be prohibited from participating in the Annual Filing Season Program in the future.*
Representation Rights

Individuals who have a valid IRS PTIN are authorized to prepare federal tax returns; however, having a PTIN does not authorize a preparer to represent a taxpayer before the IRS. Depending upon credentials and qualifications, return preparers could have unlimited, limited, or no representation rights.

Unlimited Representation Rights

Certified Public Accountants (CPAs), Enrolled Agents (EAs), and attorneys have unlimited representation rights before the IRS. Tax professionals with these credentials may represent taxpayers on any matters including audits, collection issues, and appeals.

Limited Representation Rights

Tax professionals who are not CPAs, EAs, or attorneys, but who participate in the AFSP have limited representation rights. Return preparers who have limited representation rights can only represent clients whose returns they prepared and signed, but only before revenue agents, customer service representatives, and similar IRS employees (including the Taxpayer Advocate Service).

No Representation Rights

Tax return preparers who have an active PTIN, but no credentials and do not participate in the AFSP, can prepare and sign tax returns, but have no representation rights. These preparers have no authority to represent clients before the IRS (except for returns they prepared and signed before December 31, 2015.)
Skill Check Domain 3

1. Which of the following would be considered a paid tax preparer?

   A. Ruth prepares tax returns only for her immediate family and no one else. Ruth does not receive any compensation from her family members.

   B. Naomi, a retired tax preparer, prepares returns for friends at her bridge club for $10 a return.

   C. Miriam goes online and prepares her own return on a tax preparation site and receives a $200 tax refund.

   D. Rebecca volunteers at the senior citizen’s center and assists members in filling out a paper Form 1040.

2. What penalty will be imposed for understatement of tax liability due to an unreasonable position under IRC 6694(a)?

   A. $1,000 or 50% of the tax refund shown on the return, whichever is greater

   B. $1,500

   C. $1,000 or 50% of the income the preparer receives for preparing the return, whichever is greater

   D. $1,000 minus the amount of the tax refund shown on the return

3. Alan, a tax preparer, prepares a return for his friend Rocky, a local business owner. Alan knows that Rocky is facing foreclosure on his home unless he can catch up on his monthly payments. Alan inflates the expenses on Rocky’s Schedule C in order to get a larger refund on the return and help out his friend. Alan is subject to penalties described in which of the following code sections?

   A. 6694(b)

   B. 6695(a)

   C. 7216

   D. 6694(a)
4. Paid preparers must complete and submit which form with returns claiming the EITC?
   A. Schedule 8812
   B. Form 2441
   C. Form 2106
   D. Form 8867

5. How long must tax return preparers keep copies of tax returns (or appropriate lists)?
   A. Three years
   B. Until the end of the calendar year
   C. Two years
   D. One year

6. The taxpayer can sign the Declaration of Taxpayer either before or after the return is sent electronically to the IRS. True or False.
   A. True
   B. False

7. Preparers who fail to sign returns and claims for refund will be imposed a monetary penalty. What is the amount of the penalty for each failure?
   A. $500
   B. $100
   C. $25
   D. $50

8. The IRS can publish the name of a person or firm that has been expelled from e-file. True or False.
   A. True
   B. False
9. Willfully failing to sign tax returns prepared is considered incompetent and disreputable conduct which can be located in Circular 230, Subpart B, Section _______.

A. 10.51
B. 10.20
C. 10.50
D. 10.35
Skill Check Domain 3 Answer Key

1. Which of the following would be considered a paid tax preparer?

   A. Ruth prepares tax returns only for her immediate family and no one else. Ruth does not receive any compensation from her family members.
   Incorrect. Ruth does not receive compensation for any of the returns she prepares.

   B. Naomi, a retired tax preparer, prepares returns for friends at her bridge club for $10 a return.
   Correct. Naomi is compensated $10 for each tax return she prepares and is considered a paid tax preparer.

   C. Miriam goes online and prepares her own return on a tax preparation site and receives a $200 tax refund.
   Incorrect. A person who prepares his or her return is not considered a paid preparer.

   D. Rebecca volunteers at the senior citizen’s center and assists members in filling out a paper Form 1040.
   Incorrect. Rebecca did not receive compensation for assisting with the tax returns.

2. What penalty will be imposed for understatement of tax liability due to an unreasonable position under IRC 6694(a)?

   A. $1,000 or 50% of the tax refund shown on the return, whichever is greater
   Incorrect. The amount of the tax refund shown on the return has no influence on the penalty charged.

   B. $1,500
   Incorrect. The penalty is not a flat $1,500.

   C. $1,000 or 50% of the income the preparer receives for preparing the return, whichever is greater
   Correct. The penalty is the greater of $1,000 or 50% of the income received by the preparer to prepare the return.

   D. $1,000 minus the amount of the tax refund shown on the return
   Incorrect. The amount of the tax refund shown on the return has no impact on the penalty charged.
3. Alan, a tax preparer, prepares a return for his friend Rocky, a local business owner. Alan knows that Rocky is facing foreclosure on his home unless he can catch up on his monthly payments. Alan inflates the expenses on Rocky’s Schedule C in order to get a larger refund on the return and help out his friend. Alan is subject to penalties described in which of the following code sections?

A. 6694(b)
Correct. IRC 6694(b) pertains to understatement of tax liability due to willful understatement or intentional or reckless conduct.

B. 6695(a)
Incorrect. IRC 6695(a) relates to penalties for not furnishing copies of tax returns to taxpayers.

C. 7216
Incorrect. IRC 7216 prohibits preparers from knowingly or recklessly disclosing or using tax return information.

D. 6694(a)
Incorrect. IRC 6694(a) describes penalties that will be imposed for understatement of tax liability for an unreasonable position.

4. Paid preparers must complete and submit which form with returns claiming the EITC?

A. Schedule 8812
Incorrect. Schedule 8812 is used to compute the Child Tax Credit.

B. Form 2441
Incorrect. Form 2441 reports Child and Dependent Care Expenses.

C. Form 2106
Incorrect. Form 2106 reports Employee Business Expenses.

D. Form 8867
Correct. Form 8867 is the Paid Preparer’s Earned Income Credit Checklist and must be completed using information the taxpayer supplied. Form 8867 must be filed with the return.
5. How long must tax return preparers keep copies of tax returns (or appropriate lists)?

A. Three years

Correct. Tax preparers should retain a completed copy of the tax return for a period ending three years after the close of the return period.

B. Until the end of the calendar year

Incorrect. While some documents must be retained only until the end of the year, copies of tax returns must be retained after the end of the calendar year.

C. Two years

Incorrect. Copies of tax returns must be retained for more than two years by tax return preparers.

D. One year

Incorrect. Copies of tax returns must be retained for more than one year by tax return preparers.

6. The taxpayer can sign the Declaration of Taxpayer either before or after the return is sent electronically to the IRS. True or False.

A. True

Incorrect. Taxpayers must sign the Declaration of Taxpayer to authorize submission before the tax return is electronically transmitted to the IRS.

B. False

Correct. Taxpayers must sign the Declaration of Taxpayer to authorize submission before the tax return can be electronically transmitted to the IRS.
7. Preparers who fail to sign returns and claims for refund will be imposed a monetary penalty. What is the amount of the penalty for each failure?

A. $500
   Incorrect. The penalty is less than $500 for each failure for a preparer to sign a return.

B. $100
   Incorrect. The penalty is less than $100 for each failure for a preparer to sign a return.

C. $25
   Incorrect. The penalty is more than $25 for each failure for a preparer to sign a return.

D. $50
   Correct. Failure of a preparer to sign a return will result in a $50 penalty for each failure with a maximum penalty of $25,000 for documents filed during a calendar year.

8. The IRS can publish the name of a person or firm that has been expelled from e-file. True or False.

A. True
   Correct. If a tax preparer or firm is expelled from e-file, the IRS could publish the name of the individuals or firms expelled.

B. False
   Incorrect. If tax preparers violate IRS e-file requirements, they could face sanctions including expulsion. If expelled, the IRS could publish the name of the individuals or firm expelled.
9. Willfully failing to sign tax returns prepared is considered incompetent and disreputable conduct which can be located in Circular 230, Subpart B, Section _______.

A. 10.51
Correct! Section 10.51 describes at least 18 ways a tax preparer can be incompetent or have disreputable conduct.

B. 10.20
Incorrect. Section 10.20 explains the information that the tax preparer is required to furnish if requested by the IRS.

C. 10.50
Incorrect. Section 10.50 discusses the sanctions that can be imposed on a tax preparer for violating the regulations.

D. 10.35
Incorrect. Section 10.35 describes what is considered competence to practice before the IRS.