Tax Planning, Tax Advice, and Tax Preparation by Investment Advisers:

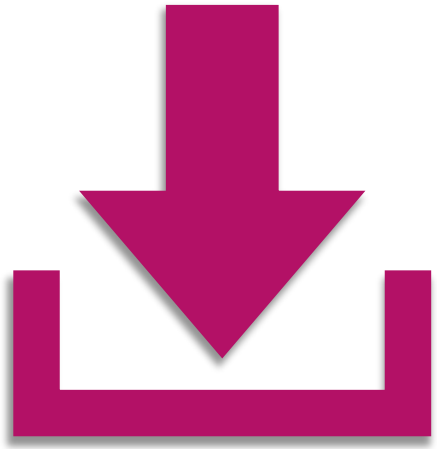
Compliance Risks and Best Practices

INVESTMENT ADVISER REPRESENTATIVE CONTINUING EDUCATION

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- **Login** - You must be logged in during the presentation under your email address.
- **View Entire Presentation** – You are required to watch the entire presentation the course.
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Content Questions & Technical Help

If you have questions about the content of this course or need technical help, please contact us via the email address below:

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Legal Resources

Authority	Principal subject
Investment Advisers Act § 206	Anti-fraud foundation for investment-adviser conduct
17 C.F.R. § 275.206(4)-1	Investment adviser marketing; misleading statements; substantiation; fair and balanced presentation
17 C.F.R. § 275.206(4)-7	Written compliance policies, annual review, and CCO responsibility
31 C.F.R. Part 10 (Circular 230)	Practice before the IRS, practitioner duties, supervision, and sanctions
26 U.S.C. § 6694	Tax-return-preparer penalties for unreasonable, willful, or reckless positions
26 U.S.C. § 7216 and 26 C.F.R. § 301.7216-2	Restrictions and permitted uses/disclosures of tax-return information
17 C.F.R. Part 248 (Regulation S-P)	Privacy and safeguarding requirements for covered institutions, including SEC registered investment advisers

Limited Scope

Course Does Not Address State Laws or Professional Rules for Lawyers, CPAs or Tax Preparers Related to Tax Services

Limitations & Exclusions

States May Have Additional Laws Which May Vary by State

Facts & Circumstances Are Critical

Presentation Is Not Comprehensive Analysis

Best Practices Are Not A Safe Harbor

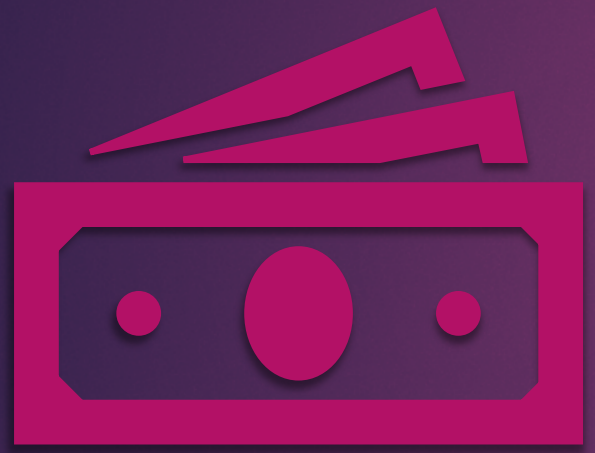
Should Discuss Particular Situation In One-On-One Context with Attorney

Course Objectives

- Distinguish tax planning, tax advice, tax return preparation, and controversy/representation.
- Select and apply a service model - tax planning only, tax advice, or return preparation—with controls appropriate to that model.
- Identify fiduciary, disclosure, supervision, licensing, and liability risks arising from tax-related recommendations.
- Describe tax services accurately in Form ADV, agreements, marketing, and internal policies.
- Recognize when CPA, EA, attorney, or other qualified-professional review is warranted.
- Identify core return-preparation controls, including PTIN/EFIN, authorization, review, retention, and e-filing controls.
- Apply IRC § 7216, privacy, cybersecurity, vendor oversight, and incident-response principles to tax data.
- Implement practical engagement-letter, disclosure, documentation, and supervision controls.

Course Overview

- Introduction: Why Tax Planning Creates Compliance Risk
- Tax-Related Services Continuum
- Investment Adviser Fiduciary and Disclosure Issues
- Marketing and Scope-of-Service Risks
- Tax Advice, Competence, and Escalation
- Income Tax Return Preparation
- Privacy, Cybersecurity, and Tax Return Information
- Supervisory Policies, Procedures, and Documentation
- Best Practices and Practical Risk Controls
- Key Takeaways



Introduction: Why Tax Planning Creates Compliance Risk

Important Framing

- Tax-related services may be valuable to clients—but they are **not** a low-risk "add-on."
- The more individualized, technical, or implementation-oriented the activity becomes, the more important competence, disclosure, documentation, supervision, and escalation become.
- **A disclaimer is a risk-control component, not a substitute for accurate communications, suitable recommendations, or sound process.**
- A firm should map the service it actually provides—not the service it hopes clients infer.

Risk Question for Adviser with Tax-Related Services

"What precisely are we doing, who is doing it, for what compensation, under what authority, and with what data?"

Risk Map for Tax Services

Service feature	***Principal risk***	***Baseline control***
Personalized tax recommendation	Competence /licensing / fiduciary / liability	Defined scope; facts and assumptions; escalation criteria
Advice affects investments or AUM	Conflict of interest	Identify, disclose, mitigate, and supervise
Tax return preparation	Preparer, authorization, and data risk	Tax engagement letter; PTIN/EFIN workflow; review controls
Affiliate performs tax work	Disclosure / data-sharing conflict	Form ADV and client disclosures; entity/data map
Tax claims in marketing	Misleading advertising	Substantiation and compliance review
Tax return data reused for advisory purposes	IRC § 7216 / privacy	Purpose-based access and consent analysis



Tax-Related Services Continuum & Service-Model Choices

Five Different Tax-Related Activities

- **Tax-aware financial planning** — identifies tax consequences and planning considerations.
- **Tax planning** — evaluates choices intended to improve tax outcomes.
- **Tax advice** — applies tax law to a client's specific facts or recommends a tax position.
- **Income tax return preparation** — prepares, or employs another to prepare, all or a substantial portion of a return or claim for refund for compensation; the operation may also include reviewing, signing, filing, or electronically transmitting returns.
- **Tax controversy / representation** — communicates with or represents a taxpayer before the IRS or another tax authority.

Tax-Aware Financial Planning

Generally lower-risk examples

- Explaining that Roth conversions can have tax consequences.
- Noting that municipal-bond interest may receive federal tax treatment different from taxable interest.
- Modeling cash-flow effects of a proposed conversion using stated assumptions.
- Advising a client to obtain CPA review before executing a strategy.

Control language

- State assumptions and limitations.
- Avoid presenting estimates as tax determinations.
- Identify data gaps and required professional review.
- Avoid an implication that the adviser has prepared or approved the client's return position.

Tax Planning Examples: Retirement and Investment Decisions

Client question	*Tax Planning Activity*	*Tax-advice/escalation indicator*
"Should I convert to Roth?"	Model the cash-flow and portfolio effects under stated tax-rate, income, and timing assumptions; explain that conversion income may affect taxes.	Advising the precise conversion amount based on application of tax-law rules to the client's return position, credits, deductions, or other individualized tax consequences.
"Should I hold bonds in my IRA or taxable account?"	Discuss tax-aware asset-location considerations, investment objectives, liquidity, and stated assumptions.	Representing a particular allocation as a guaranteed tax outcome or resolving complex state, trust, entity, or loss-limitation questions.
"Should I sell concentrated stock?"	Model sale timing, diversification, liquidity, and estimated gain exposure using client-provided basis and assumptions.	Advising on a specific tax election, qualified small-business stock treatment, charitable-transfer technique, or tax reporting position without appropriate review.

Tax Planning Examples: Charitable, Estate, and Business Issues

Topic	***Tax Planning Activity***	***Escalation Trigger***
Charitable giving	Discuss cash-flow, portfolio, and general planning effects of giving appreciated assets or bunching contributions.	Determining deduction limits, substantiation, appraisal, trust, or gift-tax consequences.
Estate / legacy planning	Identify beneficiary-designation, liquidity, and portfolio implications; coordinate with the client's attorney.	Drafting legal documents; advising on trust terms, transfer-tax positions, or state-law rights.
Business-owner planning	Discuss cash-flow, diversification, succession objectives, and financial-planning implications.	Selecting entity form; advising on compensation, basis, restructuring, valuation, payroll, or tax elections.
Education planning	Explain general account features and planning tradeoffs.	Advising on a state-specific deduction, credit, or tax filing position.

Scenario: A client has highly appreciated employer stock and wants to diversify while reducing taxes.

Service level	*Example communication*	*Governance response*
Tax-aware planning	"A sale may create taxable gain; let's model diversification and cash-flow scenarios using the basis information you provide."	Document assumptions and limitations.
Tax planning	"We can compare immediate sale, phased sale, and charitable-giving scenarios to understand possible planning tradeoffs."	Use approved modeling; confirm scope; disclose assumptions and conflicts.
Tax advice	"You should use this specific transaction structure because it will qualify for a particular exclusion or deduction."	Escalate for qualified tax/legal analysis and document its scope.
Return preparation / representation	Preparing a return reporting the transaction or responding to an IRS examination.	Apply tax-preparation or representation controls; confirm authority, engagement, and qualifications.

Choose Adviser's Tax-Service Model Before Serving Clients

Firm model	***What the firm does***	***What it does not do without escalation***	***Core protection***
Tax Planning Only	Explains tax consequences; identifies planning opportunities; models scenarios using stated assumptions; coordinates with the client's tax professional.	Make a client-specific call to action on a tax position, election, calculation, filing, or implementation.	Approved language, verbal framing, written follow-up, CPA/EA/attorney referral, and CRM documentation.
Tax Advice	Intentionally provides individualized tax recommendations within a defined scope and through qualified personnel/oversight.	Provide legal/accountancy services, represent clients before the IRS, or prepare returns unless separately authorized and controlled.	Defined authority, competence review, technical escalation, documented assumptions, E&O review, and supervision.
Tax Return Preparation	Prepares, reviews, signs, and/or files returns through a controlled tax-preparation operation.	Treat return preparation as merely a financial-planning add-on.	PTIN/EFIN, engagement, review, authorization, preparer, privacy, retention, and incident-response controls.

Best Practices for Tax-Planning Only Adviser

Objective: Deliver tax-aware value without holding the firm out as the final tax authority or making an unreviewed implementation recommendation.

- **Start with scope:** State that the discussion addresses financial-planning implications and is not a final tax determination or return-position recommendation.
- **Use conditional language:** "Here are the considerations," "we can model scenarios," and "your tax professional should confirm the tax treatment before implementation."
- **Model—not mandate:** Identify assumptions, data sources, uncertainty, and alternative scenarios; avoid presenting a precise result as the required action.

When Tax Planning Becomes Tax Advice



Recommending a specific deduction, election, entity structure, valuation position, reporting position, or transaction sequence.



Resolving uncertain tax-law interpretation.



Directing preparation of forms or taxpayer disclosures.



Advising on trusts, business entities, foreign reporting, digital assets, or reportable transactions.



Recommending or marketing an arrangement that may raise tax-evasion, promoter, disclosure, penalty, or heightened Circular 230 concerns.

Best Practices for Investment Adviser Using Tax-Advice Model

Control area	***Tax-advice-firm standard***
Scope and authority	Define permitted advice, prohibited services, credential requirements, state-law boundaries, and when a separate tax or legal engagement is required.
Competence and escalation	Maintain a technical-review path for complex, uncertain, or high-risk advice; use CPA, EA, attorney, or other appropriately qualified review as the facts and applicable law require.
Recommendation record	Preserve client facts, source documents, tax and financial assumptions, analysis, alternatives, conflicts, reviewer input, recommendation, and client instruction.
Implementation	Identify who confirms tax treatment, prepares any return, makes elections, and communicates with tax authorities. Avoid "informal" implementation based solely on an IAR discussion.
Insurance and accountability	Confirm E&O and other coverage for the intended tax-advice activity, including whether taxes, interest, penalties, and tax-advice claims are excluded or limited.
Supervision	Pre-approve higher-risk advice; sample-test files and communications; investigate errors, complaints, and near misses; update training and procedures.

Tax Return Preparation Activities

Activity	*Examples*	*Key Question*
Return preparation	Form 1040, Form 1065, schedules, amended returns	Who is the preparer; who reviews; how is filing authorized?
Electronic filing	Obtaining signature authorization; transmitting returns	Is the firm following current IRS e-file procedures and controls?
IRS notice support	Explaining a notice; gathering documents	Is this limited assistance or representation?
Representation	Power of attorney; conferences; advocacy before IRS	Is the person authorized and competent to practice before the IRS?

Decision Tree: May the IAR Proceed?

- Which firm service model applies - tax planning only, tax advice, or return preparation?
- Would a reasonable client understand the communication as a client-specific recommendation to act?
- Does the activity rely on complex, uncertain, or high-risk tax-law interpretation - or involve an election, return position, tax shelter, or reportable transaction?
- Is an affiliate or the adviser receiving a fee, AUM benefit, referral benefit, or other economic benefit?
- Will the activity involve preparing, filing, or using tax-return information?
- Does the selected model and firm policy require pre-approval or CPA/EA/attorney review?

If the activity exceeds the selected service model or raises a risk flag: pause, document the issue, escalate under policy, and communicate the defined scope to the client.

Investment Adviser Fiduciary and Disclosure Issues

Fiduciary Duty:
Tax Services Do Not Sit Outside Advisory Relationship

- Personalized tax-related recommendations may be part of advisory relationship when they inform investment, financial-planning, or implementation decisions.
- Adviser should evaluate both:
  - **Duty of care:** reasonable inquiry, analysis, competence, and advice in the client's best interest; and
  - **Duty of loyalty:** full and fair disclosure of material facts and conflicts, sufficiently specific for informed consent.
- Adviser's actual conduct must align with its stated service model, personnel qualifications, fees, conflicts disclosures, and supervision.

Common Conflicts for Tax-Related Services

- Recommending a strategy that increases assets under management or advisory compensation.
- Charging separate fees for tax planning or preparation.
- Steering clients to an affiliated tax-preparation, CPA, law, insurance, or estate-planning business.
- Receiving referral compensation or other economic benefit.
- Using tax-return information to identify advisory sales opportunities.
- Providing “free” tax services conditioned on, or designed to retain, advisory assets.

Conflict of Interest Analysis: A Repeatable Framework

Question	***What to document***
What is the client being asked to do?	Recommendation and alternatives considered
What tax and investment assumptions are used?	Source, date, limits, and client confirmation
Who benefits economically?	Adviser, IAR, affiliate, third party, client
Is the conflict disclosed clearly enough?	Disclosure location, timing, and client-facing language
Is mitigation feasible?	Independent review, fee separation, client choice, recusal, supervision
Does the client need outside review?	Referral/escalation decision and communication

Align Tax Services with Advisory Documents

- Form ADV Part 2A brochure: descriptions of services, fees, methods of analysis, conflicts, affiliations, and disciplinary or other material disclosures as applicable.
- Advisory agreement: scope, exclusions, fees, responsibility allocation, termination, and limitations.
- Tax engagement letter: separate tax scope, taxpayer responsibilities, deadlines, consent/authorization workflow, and limitations.
- Marketing materials: website, pitch books, social media, client reports, and educational materials.
- P&P: compliance manual, supervisory procedures, training materials, privacy policy, information security plan and incident-response plan.

Client Communications

Use clear, accurate statements

- Identify whether the firm provides education, planning, advice, preparation, or coordination.
- State whether a CPA, EA, attorney, or affiliate is involved—and in what role.
- Explain applicable fees and material conflicts before engagement.
- State client responsibilities: complete and accurate information, timely review, and final approval.
- Identify limitations: forecasts are estimates; tax law can change; legal/tax positions may require external review.

Avoid

- "We handle all your tax needs" when the firm does not.
- "Tax expert" or "tax savings" claims that cannot be substantiated.
- Guarantees of tax results, refunds, audit outcomes, or strategy effectiveness.



Marketing and Scope-of-Service Risks

SEC Rule 206(4)-1

- Prohibits materially misleading advertisements and requires a reasonable basis for **substantiation** of material statements of fact.
- Requires fair and balanced treatment when discussing benefits together with material risks or limitations.
- Applies to tax-related services offered by an investment adviser.

Rule Applies to Tax-Related Marketing Messages

- "Tax-smart" / "tax-optimized" / "tax-efficient" claims
- Tax savings, reduced-tax, or refund examples
- Qualifications and credential descriptions
- Testimonials, endorsements, and referral arrangements
- Tax projections and scenario illustrations used in marketing

Review Marketing Claim Before Publication

Claim	***Primary question***	***Example control***
"We provide tax planning"	What does that service actually include?	Approved service definition and scope statement
"Tax experts"	Is the statement accurate and supportable for the actual personnel?	Credential and experience substantiation
"Save on taxes"	Is a benefit promised, implied, or missing material limitations?	Balanced risks, assumptions, and no-guarantee language
Client tax-success story	Is it a testimonial/endorsement or otherwise misleading?	Marketing Rule review and disclosures as applicable
Tax-model projection	Is it presented as a certainty?	Assumptions, limitations, audience controls, review

Examples of Scope Creep

- “Can you just tell me which deduction I should claim?”
- “Can you fill in this tax form based on the documents I uploaded?”
- “Will this family limited partnership discount work?”
- “What should my S corporation pay me in wages?”
- “Can you handle the IRS notice?”
- “Use last year’s return to show me how much more I can invest.”

Tax Advice, Competence, and Escalation

Circular 230:
Use It as a Competence and Escalation Lens

- **Practice before the IRS:** Includes matters connected with a presentation to the IRS, such as preparing or filing documents, communicating with the IRS, representing a taxpayer, and certain written advice involving potential tax avoidance or evasion.
- **Competence:** A practitioner must possess the necessary knowledge, skill, thoroughness, and preparation for the matter. 31 C.F.R. § 10.35
- **Written advice:** A practitioner providing written federal tax advice must use reasonable factual and legal assumptions, consider all relevant facts, and not rely on unreasonable representations. 31 C.F.R. § 10.37
- **Supervision:** A practitioner with responsibility for a firm's tax practice must take reasonable steps to ensure compliance with Circular 230. 31 C.F.R. § 10.36

Who May Practice Before IRS

Attorneys. "Any attorney who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service . . . ."

Certified public accountants. "Any certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service . . . ."

Enrolled agents. "Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service."

When Does Tax Advice Require a Lawyer, CPA, or EA?

If the IAR's activity is…	**Circular 230 / credential implication**	**Required firm response**
General tax-aware planning—explaining possible tax consequences and using disclosed assumptions	No automatic Circular 230 credential requirement solely because taxes are discussed.	Stay within approved scope; avoid definitive tax conclusions; document assumptions and limitations.
Written advice applying federal tax law to a client's specific facts	If rendered by a Circular 230 practitioner, written advice must meet reasonable factual, legal, diligence, and analysis standards. 31 C.F.R. § 10.37	Escalate complex or outcome-determinative advice to an appropriately qualified professional; preserve the review record.
Preparing a return or taking a return position	The activity can trigger preparer rules and IRS credential/filing requirements; it is not automatically limited to attorneys, CPAs, or EAs under federal law.	Confirm PTIN/EFIN, tax-preparation engagement, review, authorization, and applicable state rules.
Representing the client before the IRS	Attorneys, CPAs, and EAs are principal categories permitted to practice before the IRS under Circular 230, subject to the regulation's conditions. 31 C.F.R. § 10.3	Do not represent or contact the IRS on the client's behalf without confirmed authority, scope, and competence.
Legal, accountancy, or tax-preparer services regulated by state law	Circular 230 does not displace state attorney licensing, CPA/accountancy, unauthorized-practice-of-law, or tax-preparer requirements.	Obtain state-specific legal/compliance review before the service is offered or marketed.

Tax Advice, Credentials & Licensing

Activity	Federal framework	Key caution
General tax-aware financial planning	No federal rule in Circular 230 automatically requires an IAR to be an attorney, CPA, or EA merely to discuss general tax considerations.	Adviser fiduciary, disclosure, competence, marketing, and firm-policy duties still apply.
Individualized tax advice	Circular 230 may apply when the activity is practice before the IRS; state law may also regulate legal or accountancy practice.	Use a defined scope and escalate complex advice. Do not imply an unlicensed person is providing legal or CPA services.
Tax shelter/tax-avoidance arrangement	A recommendation or promotion involving a tax shelter, reportable transaction, or arrangement promoted principally for tax avoidance raises heightened federal tax, preparer-penalty, Circular 230, anti-fraud, and state-law risk.	Do not recommend, facilitate, or market it without documented pre-approval and review by appropriately qualified tax counsel, CPA, or EA, as applicable. Do not participate in tax evasion or promote an unvetted strategy.
Return preparation	Paid preparer rules, PTIN/EFIN and e-file requirements may apply; a CPA, attorney, or EA credential is not the only possible federal pathway to prepare a return.	Confirm current IRS requirements and applicable state preparer rules.
IRS representation	Practice-before-the-IRS rules govern who may represent a taxpayer.	Authority to represent at the IRS is different from authority to practice law or public accountancy under state law.

When an Attorney, CPA, or EA Should Be Involved

- **Attorney involvement is generally appropriate when the work includes:**
  - Legal advice, legal-document drafting, trust/entity rights and obligations, privilege-sensitive issues, controversy, or matters potentially implicating unauthorized-practice-of-law rules.
- **CPA involvement is generally appropriate when the work includes:**
  - Accounting judgments, attest/assurance services, complex financial-statement issues, or work within a state's regulated public-accountancy scope.
- **EA, CPA, or attorney involvement is generally appropriate when the work includes:**
  - Complex federal tax-law analysis, return positions, substantive tax determinations, or IRS representation within the professional's authority.

Important: *These are practical escalation categories, not a substitute for a state-specific licensing analysis. The firm's policies should impose stricter requirements where appropriate.*

Escalate High-Risk Subject Areas

- Entity formation, reorganizations, or business succession transactions.
- Family limited partnerships, valuation discounts, carried interests, or deferred-compensation questions.
- Trust, estate, charitable, or generation-skipping strategies.
- International tax, FBAR/FATCA, foreign entities, foreign trusts, or cross-border reporting.
- Digital assets, reportable transactions, conservation easements, or tax shelters.
- Return positions involving uncertainty, substantial authority, or disclosure analysis.
- IRS examination, notice, audit, controversy, collection, or penalty matters.

CPA/EA/Attorney Coordination Model

Stage	Investment adviser role	Qualified-tax-professional role
Identify issue	Gather relevant client objectives and non-tax financial facts	Confirm tax question and information needs
Model scenarios	Show financial impact using disclosed assumptions	Determine legal/tax assumptions and analyze tax position
Recommendation	Explain investment/planning implications and alternatives	Review or approve tax-law conclusions where engaged
Implementation	Coordinate timing and account actions; obtain client direction	Prepare/advise on tax documents, return position, or representation
Record	Preserve assumptions, approvals, client communications	Preserve workpapers and advice under applicable professional rules

Documentation of Tax-Sensitive Recommendations

- Client objective and relevant facts received.
- Sources, date, and completeness limitations of information.
- Financial-planning assumptions and tax assumptions.
- Alternatives considered and material limitations/risks discussed.
- Conflicts, fees, and affiliated-entity involvement.
- Name, role, and scope of CPA/EA/attorney review, if any.
- Client decision, instructions, and any remaining action items.



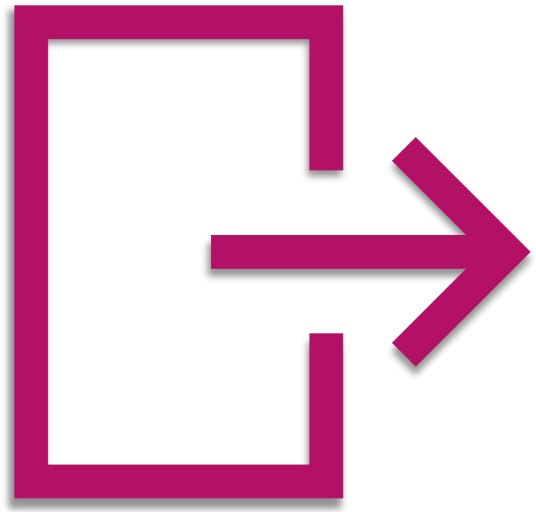
Income Tax Return Preparation by Investment Adviser or Affiliate

Return Preparation Is a Separate Operating Model

Preparing a return introduces a different control environment:

- Who qualifies as the preparer under applicable law?
- Is each paid preparer assigned a current **PTIN**?
- Does the business need an **EFIN** and current IRS e-file authorization?
- Who may access the tax software, taxpayer portal, and e-file credentials?
- How are identity verification, review, taxpayer signatures, filing authorization, and acceptance/rejection notices controlled?
- How are extensions, amendments, foreign reporting, digital-asset questions, and IRS notices routed?

Need Additional Compliance Program for Tax-Preparation



Do not assume an investment advisory compliance program is a sufficient tax-preparation compliance program.

Who Qualifies as a Federal Tax Return Preparer?

Under federal law, a "tax return preparer" generally is a person who prepares for compensation - or employs someone to prepare for compensation - a federal tax return or claim for refund.

Preparing a **substantial portion** of a return is treated as preparing the return.

FAQs About Federal Tax Return Preparer

Question	Practical answer
Does the person need to be a CPA, attorney, or EA to be a federal tax return preparer?	Not necessarily. The federal preparer definition turns on compensated preparation, not that credential alone. But state licensing/tax-preparer rules may impose additional requirements.
Does clerical support make a person a preparer?	Not merely typing, reproducing, or providing other mechanical assistance. The statutory definition also contains limited exceptions for certain employee, fiduciary, and audit-response situations.
When is a PTIN relevant?	A return or refund claim prepared by a tax return preparer must bear the identifying number prescribed for the preparer, employer, or both. In practice, paid preparers generally need a current PTIN.
Does preparer status authorize IRS representation?	No. Return preparation, signing, e-filing, tax advice, and IRS representation involve different federal and state requirements. Confirm Circular 230 authority and applicable state law before representation.

Tax Preparation Engagement Letter: Core Topics

A separate tax engagement letter should address:

- Returns, tax years, jurisdictions, and services covered.
- Services expressly excluded (e.g., audit representation, legal opinions, foreign reporting, payroll, amended returns unless separately engaged).
- Client responsibility for complete and accurate information and supporting records.
- Deadlines, extensions, client review, final approval, and e-file authorization.
- Fees, billing, and affiliate relationships.
- Document-retention practices and communication channels.
- Privacy/data-use terms and the limits of any consent.
- Scope and process for IRS/state notices, examination assistance, and representation.

Return Preparation Workflow and Controls



- **Onboard:** engagement letter, identity verification, secure-document intake, conflict/data-use screening.
- **Prepare:** standardized organizer; source-document checklist; exception flags; restricted access.
- **Review:** preparer review plus risk-based second review; escalation of technical issues.
- **Approve:** client receives completed return; confirms accuracy; signs applicable authorizations.
- **File:** controlled e-file submission; evidence of authorization; monitor acceptance/rejection.
- **Close:** retain required records; communicate filing result; route notices and amendments under defined scope.

Preparer Penalties: A Concrete Risk Reminder

IRC § 6694 can impose penalties where a preparer knew or reasonably should have known of an unreasonable position and provides higher penalties for willful or reckless conduct.

- **Controls to reinforce:**
  - Do not manufacture facts or accept facially implausible information without appropriate inquiry.
  - Identify positions that need technical review, disclosure analysis, or client substantiation.
  - Preserve review and escalation records.
  - Maintain a clear client-responsibility and final-review process.

High-Risk Return Topics: Escalate Early

- Extensions and late-filed returns.
- Amended returns and prior preparer work.
- Foreign accounts/assets, FBAR/FATCA, and foreign information reporting.
- Digital-asset transactions.
- Business income, entity issues, shareholder/partner items, and multistate returns.
- Trusts, estates, gifts, and inherited assets.
- Equity compensation, options, restricted stock, and executive compensation.
- IRS notices, audits, controversy, and collection matters.



Privacy, Cybersecurity, and Use of Tax Return Information

Tax Return Information Is Not Ordinary Client Data

IRC § 7216 generally restricts knowing or reckless disclosure or use by paid preparers of return information for purposes other than preparing or assisting with the return, subject to statutory and regulatory exceptions.

Operational implications

- Purpose limitation matters.
- Affiliation alone does not automatically permit data sharing.
- A general privacy notice or broad client consent may not satisfy the specific requirements applicable to tax-return information.
- Evaluate every proposed use, disclosure, recipient, and system.

IRC § 7216: Advisory-Use Trap

Scenario: The firm prepares a client's return, identifies a large taxable brokerage balance, and uses the return data to market or recommend additional advisory services.

Risk: The information was obtained in connection with return preparation; using it for a non-return-preparation purpose can trigger § 7216 restrictions unless a valid exception or consent applies.

Data-Sharing Decision Guide: Firm, Affiliate, Contractor, or Foreign Access?

Recipient / activity	**May it be permitted without taxpayer consent?**	**Required control**
Employee, officer, or member of the same tax-return-preparer firm in the United States, assisting with the taxpayer's return	Often, if the use/disclosure is for return preparation or qualifying auxiliary services.	Limit access to the preparation purpose and document role-based access.
A separate tax return preparer in the United States performing limited processing or auxiliary work	May be permitted in specified circumstances; substantive tax determinations or advice by the second preparer generally require further analysis.	Confirm scope, recipient role, U.S. location, and applicable regulatory conditions before disclosure.
Affiliate, related firm, common-control entity, or shared-services company	Not automatically. An affiliate is not necessarily the same tax return preparer for § 7216 purposes.	Treat the affiliate as a separate recipient; identify purpose/data elements; assess an exception; obtain taxpayer consent when required.
Contractor supporting tax software, equipment, or processing	May be permitted only to the extent necessary and subject to regulatory conditions.	Written contract, minimum necessary access, and required written notice to individuals receiving tax-return information.
Person located outside the United States	Cross-border disclosure is restricted and can require taxpayer consent; certain information, including an SSN, has additional limits.	Prohibit offshore access unless approved through a specific § 7216 and privacy review.
Advisory or marketing use of return information	Not a return-preparation purpose.	Do not use or disclose without a valid legal basis and, where required, properly structured taxpayer consent.

Data Sharing, Vendors, and Affiliates: Practical Controls

- Maintain a data-flow inventory: entity, system, location, recipient, and purpose.
- Use least-privilege access and role-based permissions.
- Do not assume that common ownership, shared personnel, or a shared brand permits access to tax-return information. Identify the affiliate, purpose, data elements, and legal basis; obtain a valid consent when required; and disclose related-party conflicts and data-sharing practices clearly to the client.
- Contractually restrict vendor use, disclosure, subcontracting, security, incident notification, and data return/deletion.
- Evaluate offshore access and storage before implementation.
- Require compliance/legal approval before allowing tax data into new systems or affiliates.

Privacy and Cybersecurity: Regulation S-P Overlap

SEC Regulation S-P establishes privacy and safeguarding obligations applicable to investment advisers registered with the SEC.

State-registered advisers remain subject to applicable state and other federal privacy and cybersecurity requirements.

- **Tax-data controls should include**
  - Written information security plan aligned to the firm's risk assessment.
  - Secure portal, encryption, multi-factor authentication, logging, and access reviews.
  - Vendor due diligence and contract controls.
  - Incident-response playbooks that recognize tax-return information sensitivity.
  - Workforce training on phishing, misdirected email, account takeover, and secure sharing.
  - Testing of data restoration, notification, and escalation paths.

Public AI Tools

Do not upload taxpayer documents, return data, SSNs, or client tax workpapers to an unapproved public or consumer AI tool.

Before approving any AI-enabled tax workflow, assess:

Data inputs, retention, model training/use, and geographic processing.	Authentication, access controls, audit logs, and administrator controls.	Vendor contractual commitments and downstream subprocessors.	Accuracy, hallucination, human review, and recordkeeping.	Whether the use/disclosure is permitted under § 7216 and other applicable privacy obligations.



Supervisory Policies & Procedures

Written Policies & Procedures

- **Tax-related procedures should address**
  - Permitted, restricted, and prohibited tax-related activities.
  - Tax-service scope definitions and credential requirements.
  - Referral and escalation criteria.
  - Pre-approval for high-risk strategies and affiliate engagements.
  - Form ADV, marketing, agreement, and disclosure review.
  - Tax-data access, consent, vendor, and AI restrictions.
  - Supervisory testing, exception handling, and annual review.

Sample Time Sensitive Recommendation Review Matrix

Risk tier	Examples	Required action
Tier 1 — Routine	General education; tax-aware asset-location discussion	Use approved materials; document material assumptions as appropriate
Tier 2 — Elevated	Roth conversion modeling; concentrated stock; charitable-giving strategy	Supervisor review or defined checklist; client-specific assumptions documented
Tier 3 — High	Entity restructuring; trusts; foreign reporting; return position; tax shelter/reportable transaction	Written escalation; CPA/EA/attorney review; documented approval before implementation
Tier 4 — Restricted	IRS representation outside authority; legal opinion; prohibited/unsupported strategy	Do not proceed; refer or obtain formal approval under policy

Periodic Testing:

Best Practices and Practical Risk Controls

Actual tax-related services versus ADV, agreements, and website descriptions.

Proper conflict and affiliate disclosures.

Use of approved engagement letters and current consent forms.

Tax-data access rights, shared drives, portals, and vendor permissions.

Public AI / unapproved tool compliance.

High-risk-strategy approvals and external-professional review documentation.

Return workflow evidence: signatures, authorizations, review, e-file acceptance, and exception logs.

Incident reports, complaints, client confusion, and remediation.

Best Practices and Practical Risk Controls



Ready to Offer Tax-Related Services

Governance

- Is the exact service defined and approved?
- Are qualified personnel, capacity, and supervisory resources in place?

Disclosure and documentation

- Do ADV, agreements, marketing, client disclosures, and policies match?
- Are fees, conflicts, affiliates, and limitations clear?

Operational controls

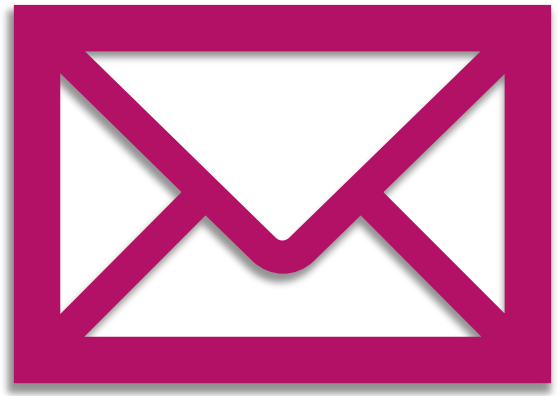
- Is the CPA/EA/attorney escalation path functional?
- Are return-preparation and e-filing controls distinct from advisory operations?
- Is tax data protected, purpose-limited, and restricted from unapproved AI tools?

Insurance and review

- Does E&O/cyber coverage match the actual tax-service model?
- Is periodic compliance review scheduled and documented?

Questions

Please submit any question online or email with any questions about the content of this course.



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Thank You

