

# **Quality Control**

## TABLE OF CONTENTS

Purpose of Manual .....	3
Supervision .....	4
Hiring .....	7
Preparer Tax Identification Numbers [PTIN] Requirements.....	8
Professional Development .....	9
Advancement .....	12
Inspection.....	14
Providing Tax Advice to Clients.....	16
Comfort Letters.....	21
Law Enforcement Inquiries.....	22
Section 6694 Penalties .....	23
Procedures for Issuing Written Tax Advice.....	25
Client Confidentiality in Tax Matters.....	27
Marcum Leadership .....	29
Marcum National Tax Department Partner Roles and Responsibilities .....	30
National List of Collators for GoSystem RS and ProSystem <i>fx</i> Administration .....	32
Tax Department Organizational Chart.....	33
Software Team Leaders .....	34
Code of Professional Ethics – Code of Conduct From AICPA .....	35
Tax Department Ethics .....	47
Advocacy and Integrity.....	49
Proposals, Acceptance and Continuance of Clients.....	52
Retaining Tax Files and Tax Returns.....	57
Performance of Services Qualified and Authorized to Provide.....	58
Planning for Engagements .....	65
Assigning Personnel to Engagements .....	66
Consultation .....	67
Section B - General Compliance Procedures.....	68
GoSystem RS Engagements .....	68



## *QUALITY CONTROL MANUAL*

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### **PURPOSE OF MANUAL**

A professional Firm that provides high quality service will satisfy its clients. It will minimize its liabilities while maximizing its ability to generate profits, obtain repeat engagements and obtain new engagements through referrals. Equally important, a Firm providing quality service creates a satisfying work environment and one that maximizes opportunities for professional growth.

Marcum LLP is known for high quality services and is committed to maintaining and enhancing that reputation. The quality and profitability of the Firm's tax practice requires that all of the Firm's professionals, at every level, work as an efficient team. The procedures and policies set forth in this Manual are intended to facilitate those cooperative efforts. All tax work performed by Marcum LLP, whether or not performed by members of the tax business line, is subject to these principles.

The Firm's tax services include tax compliance, tax consulting, tax controversy and assurance support. Inevitably, these areas overlap. Generally, tax compliance includes preparation of tax returns, elections and related reports; tax consulting includes such activities as advising clients as to tax-efficient ways of organizing and structuring their activities and transactions, and advising clients regarding tax elections, tax accounting methods and periods; tax controversies include examinations, appeals and administrative hearings; and assurance support consists of assisting the assurance practice group in verifying that all tax information they use or provide is accurate, appropriate and complete. It is generally appropriate for us to provide client advice regarding any tax or tax-related situation in which we are competent. We must not, however, provide non-tax legal advice (e.g., the determination of an entity's legal status as a corporation).

Any questions, concerns, or recommendations about our quality control system should be communicated to the managing partner or partner in charge of the tax department.



## QUALITY CONTROL MANUAL

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### SUPERVISION

The Firm has established policies and procedures for the conduct and supervision of work at all organizational levels to provide reasonable assurance that the work performed is in compliance with the Statements on Standards for Tax Services and meets the Firm's quality control standards. The extent of supervision and review appropriate in a given situation depends on many factors, including the complexity of the subject matter, the risk of penalties being imposed, the qualifications of the persons performing the work, and the extent of consultation available and used.

All engagements are adequately planned by persons knowledgeable about the client and the type of engagement, including specific evaluation of risk factors.

Substantial tax engagements are budgeted and planned prior to commencement. The plan contains specific follow-up points for supervisory personnel.

For engagements in which the Firm represents a client in a tax examination by the IRS or other tax authority, the engagement partner and tax accountant will jointly develop an approach to the examination, including assignment of appropriate personnel to work with the examining agent.

Tax accountants involved in reviewing working papers related to a financial statement engagement are included in the engagement planning conferences related to that engagement.

An engagement letter is used for certain tax returns and tax services to document the nature of the engagement. The Firm's policy on issuing tax engagement letters is outlined in the Quality Control Manual [Section 4](#) and the Best Practices Manual [Section 5](#)

Procedures are provided for maintaining the Firm's standards of quality for the work performed.

- Tax engagements, or those segments of other engagements that include tax matters, are supervised directly by the tax partner or a person designated by the tax partner.
- Working papers document the sources of data used, conclusions reached, and actions taken on behalf of clients.
- To resolve questionable items, a memorandum is prepared stating the interpretation of the facts and citing the authorities relied upon.
- The Firm Wide Tax PIC is responsible for ensuring that the Firm's client filing system meets such needs of the tax practice as accessibility, confidentiality, quality control, and retention.



## QUALITY CONTROL MANUAL

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- A control system is established for the miscellaneous reports and returns prepared or reviewed by the Firm.
- The tax partner is responsible for ensuring that file retention policies comply with the IRC, Treasury Department Circular 230 and other federal or state regulatory requirements as promulgated.
- Consideration should be given to documenting conversations and emails with clients in which advice is given or an interpretation of tax impact is made.
- The tax department will maintain "due date control logs" for the various types of returns filed.
- All tax staff are required to become familiar with the Firm's Best Practices Manual.
- Differences of opinion regarding tax matters should be resolved as discussed in Quality Control Manual Section 7, Consultation.

Procedures are provided for monitoring and reviewing engagement working papers, reports, tax returns, tax opinions, substantive tax correspondence, and oral advice.

- Before delivery to the client, all returns are reviewed by a qualified tax reviewer other than the preparer, the review is documented in the workpapers, and the returns are signed in accordance with the Firm's policies and procedures and pursuant to reg. section 1.6695-1(b)(2).
- Tax research projects are reviewed by a qualified tax accountant who is knowledgeable in the area being researched, whether or not the research results in a formal communication to the client. In addition, the engagement partner or other responsible supervisory person familiar with the client reviews the project's documentation to ensure that the facts are properly understood.
- For engagements in which the Firm represents a client in a tax examination, a tax accountant reviews the examining agent's proposed adjustments and all related working papers before conclusion of the engagement.
- Written communication regarding client tax matters, including documentation of oral communication and powers of attorney are reviewed by the tax partner or a designated tax accountant.
- Tax accountants involved in planning financial statement engagements also review tax-related working papers.

Procedures are provided for maintaining the Firm's responsibility to clients for CPA-client privilege for all practice areas subject to IRC sections §7525, §7216 and state-specific



## *QUALITY CONTROL MANUAL*

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confidentiality rules, as well as the Firm's privacy policy in accordance with the FTC rule. (See related FTC regulations; *AICPA Practice Guide on Confidentiality Privileges Relating to Taxpayer Communication*; *AICPA Practice Guidance on Compliance with Privacy Protection Provisions of the Graham-Leach-Bliley Act*.)

- All personnel of the Firm are informed of the Firm's responsibility for CPA-client privilege and the Privacy policy.
- The tax partners are responsible for insuring the Firm's compliance with protecting the client's privilege and confidentiality.



## *QUALITY CONTROL MANUAL*

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### **HIRING**

The Firm has established policies and procedures for hiring to provide reasonable assurance that those employed possess the appropriate characteristics to perform competently. The quality of the Firm's work depends on the integrity, competence, and motivation of the people who perform and supervise the work. The Firm's hiring policies are detailed within the Best Practices Manual.

All hiring decisions within the tax department must meet with the approval of the Office Tax PIC of each office for positions below Senior Manager. The Regional Tax PIC must approve all Senior Manager hiring and the Firm Wide Tax PIC must approve all Partner hiring.

To reasonably assure that persons with acceptable qualifications are hired by the Firm, the background of all new employees is appropriately investigated by obtaining completed application forms, college transcripts, and personal references.

Applicants and new employees are informed of the Firm's policies and procedures relevant to them and their work.

- The Firm's personnel policies and procedures relevant to applicants are communicated to them before offers of employment are extended.
- Personnel policies and procedures are in writing and distributed to all personnel.
- The Director of Human Resources discusses the Firm's personnel policies and procedures with new employees.

See Sections in the Quality Control Manual for Hiring Procedures on the following topics:

- A. [Preparer Tax Identification Number \(PTIN\) Requirements](#)



## *QUALITY CONTROL MANUAL*

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### **PREPARER TAX IDENTIFICATION NUMBERS [PTIN] REQUIREMENTS**

As part of an initiative to ensure that tax return preparers are competent and qualified, the IRS requires paid tax return preparers (who prepare, review, or sign tax returns) to obtain a Preparer Tax Identification Number (PTIN) before preparing any federal tax returns.

Access the online application system through the Tax Professionals page of the IRS website.

<http://www.irs.gov/Tax-Professionals/PTIN-Requirements-for-Tax-Return-Preparers>

Individuals who currently possess a PTIN will generally be reassigned the same number.

All tax professionals must renew their PTIN each year by December 31<sup>st</sup>. In order to monitor compliance with this requirement each Marcum tax return “Preparer” must enter their PTIN and the expiry date in the appropriate fields in your My HR Info Personnel Site before December 31<sup>st</sup> of each year. Instructions on how to register for a PTIN and how to enter the PTIN into the My HR Info Personnel Site are included in the Tax Portal.



## *QUALITY CONTROL MANUAL*

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### **PROFESSIONAL DEVELOPMENT**

The Firm has established policies and procedures for professional development to provide reasonable assurance that people performing tax work will continue to have the knowledge required to enable them to fulfill their assigned responsibilities. Continuing professional education and training activities enable the Firm to provide its people with the knowledge and skills to fulfill responsibilities assigned to them and to progress within the Firm.

Guidelines and requirements have been established for the Firm's tax education program and are communicated to all people involved in tax work.

- The PIC is responsible for the formulation and implementation of the Firm's policy regarding the guidelines and requirements for the tax department's professional development programs. The Firm's professional development year is a calendar year. Prior to the start of each year, the PIC (or designee) is to prepare the professional development program for the coming year with input from other tax partners, including:
  - The professional development objectives of the tax department.
  - The specific courses to be taken, identified by individual.
  - Tentative dates for professional development by individual.
  - Evaluation of cost associated with such training.
- A basic program of tax training will be provided to staff accountants and will consist of on-the-job training, formal group programs, and self-study programs, as appropriate.
- The office tax PIC (or designee) develops a plan for each accountant in the tax department to maximize the training benefits of job assignments.
- Each partner and professional staff member is required to complete a minimum of 40 hours of continuing professional education each 1 year. Upon the completion of a course, personnel are required to complete and submit records related to the courses attended. (In house programs, sign in sheets and evaluations are provided by the Firm.) All records are forward to the Director of Training. The tax office PIC is responsible for updating the personnel files of each partner and professional employee to include a current record of the hours of professional development completed. The types of programs qualifying for the fulfillment of the requirements include:
  - Continuing professional education programs of the AICPA and state societies, including both sessions attended and self-study programs, as long as there is written evidence of completion.



## QUALITY CONTROL MANUAL

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- College courses related to the profession.
- In-house education programs.
- Personnel are reimbursed for membership dues paid to the AICPA, the AICPA Tax Division, one state society, and the local chapter of the state society.
- Personnel are encouraged to serve on state society or AICPA committees, write articles for professional publications, serve as discussion leaders at professional development seminars, give speeches, etc.
- Resolution of conflicts between professional development course attendance and engagement scheduling requires office tax PIC approval.

Information about current tax developments, changes in professional standards affecting tax practice, and materials containing the Firm's policies and procedures affecting its tax practice is made available to all professionals involved with tax work.

- Pronouncements (such as those issued by the IRS and other taxing authorities) relating to areas of specific interest are distributed by the service line leader or industry leader or their designee to persons who have responsibilities in such areas.
- The Firm conducts formal in-house educational programs. The purpose of the programs is to discuss current literature and elaborate on the distributed materials.

The Firm encourages people to grow and mature as individuals and as professionals through seminars, workshops, college and university course work, and self-study programs. It also provides, to the extent necessary, programs not otherwise readily available to fill the Firm's needs for people with expertise in specialized areas and industries.

- The PIC is responsible for arranging CPE programs on tax matters for those involved in special areas.
- Formal tax training is scheduled to develop expertise in areas the Firm needs and to maintain expertise in areas the Firm has already developed.
- Specialized tax training will be provided for those persons demonstrating special expertise or interest in the tax area.
- Individuals designated as having special experience and expertise maintain their proficiency by attending external professional education programs.



## *QUALITY CONTROL MANUAL*

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- The Firm designates certain individuals to be responsible for joining appropriate associations, and it pays for those memberships relating to specialized areas or industries in which the Firm is engaged or intends to become engaged.
- The service line leader or industry leader or designee is responsible for maintaining technical literature on specialized areas and industries.

The Firm provides for on-the-job training during the performance of tax work.

- Personnel with in-charge responsibility on engagements explain to assistants the reasons for any additional work requirements discovered through the review process.
- Personnel are evaluated in part on their effectiveness in properly training and developing subordinates.
- The office tax PIC or designee monitors tax assignments to determine that personnel are:
  - Gaining experience in various engagements and varied industries.
  - Working under different supervisory personnel.



## *QUALITY CONTROL MANUAL*

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### **ADVANCEMENT**

The Firm has established policies and procedures to provide reasonable assurance that those selected for promotion have the necessary qualifications for fulfillment of the responsibilities they will be called on to assume.

The Firm has established qualifications for the various levels of responsibility for people involved with tax work in the Firm. Levels of responsibilities inherent in various staff classifications are clearly defined within the Best Practices Manual. These are the general experience levels for the classifications. These may differ due to individual goals and abilities of the individuals. The Firm has established the following staff classifications:

- Intern
- Staff
- Senior
- Supervisor
- Manager
- Senior Manager
- Director
- Partner

Complete descriptions of performance standards for each level are located in the Human Resources Portal (“HR Portal”).

Criteria for evaluating individual performance and the expected level of proficiency are stated in the Firm's staff classification guidelines which are also contained in the HR Portal (See Marcum Standards of Excellence documents).

The Firm's Employee Handbook provides information about the Firm's advancement policies and procedures. The Director of Human Resources issues updates as needed to incorporate changes that the partnership makes to the Firm's policies and procedures.

The performance of people is evaluated and their progress periodically reviewed with them. Personnel files containing documentation relating to the evaluation process are maintained.

- All professional employees in the tax department receive an evaluation of their performance at least annually. Among the items discussed are the individual's progress, strengths, weaknesses, and future objectives and the Firm's future objectives. Documentation of the interview, evaluation forms, and staff assessment are forwarded to the partner in charge of the tax dept. for review, and then to the Director of Human Resources for inclusion in the personnel files.



## *QUALITY CONTROL MANUAL*

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- The Director of Human Resources reviews the system of personnel evaluation and counseling to ensure that:
  - Procedures for evaluation and documentation are being followed on a timely basis.
  - The established requirements for advancement are being met.
  - Personnel decisions are consistent with evaluations.
    - Recognition is given to outstanding performance.

Responsibility for making promotion decisions is assigned to specific individuals.

- The office PIC is responsible for making advancement and termination recommendations. Appropriate personnel files are maintained by the human resources dept.
- The office PIC and/or the Director of Human Resources evaluates the foregoing data and, after giving appropriate recognition to the quality of the work performed, makes advancement recommendations to the managing partner. The managing partner has the ultimate responsibility for making advancement decisions.



## QUALITY CONTROL MANUAL

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### INSPECTION

The Firm has established policies and procedures for inspection (file review) to provide reasonable assurance that the procedures relating to the other elements of quality control are being effectively applied. Procedures for inspection have been developed and may be performed by individuals from within or without the Firm acting on behalf of the Firm's management. The type of inspection procedures used will depend on the controls established by the Firm and the assignment of responsibilities within the Firm to implement its quality control policies and procedures. (See *AICPA Publication Guidelines for Voluntary Tax Practice Review*.)

The Firm conducts an inspection program regarding its quality control policies and procedures for conformity with Treasury Department Circular 230, the AICPA Statements on Standards for Tax Services, and industry preferred practices.

On a biannual basis the PIC will appoint an inspection team to evaluate the Firm's quality control policies and procedures for conformity with professional guidelines.

The team obtains reasonable assurance that quality control policies and procedures are being followed by:

- Questioning the people who are responsible for a function or activity.
- Reviewing selected administrative and personnel files.
- Reviewing selected engagement working paper files, tax returns, and reports.
- Reviewing other evidential matter.

The inspection team selects a sample of engagements from each partner's and manager's tax client list and reviews it in depth. The working papers, tax returns, and reports are reviewed for compliance with professional standards and with the Firm's quality control policies and procedures.

The partner in charge of the Trust and Estate practice will review or have a specialist review all Estate engagements. As required, each service line PIC (Family Wealth Services, Corporate, High Net Worth, Alternative Investments, etc. will assign a specialist to review such engagements.

Differences of opinion may arise between members of the inspection team and:

- The engagement team.
- The individual responsible for a functional area.



## *QUALITY CONTROL MANUAL*

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The PIC resolves these differences if the difference of opinion is with the engagement team and the managing partner will resolve if the difference of opinion concerns a functional area.

Provision is made for reporting inspection findings to the appropriate management levels and for monitoring actions taken or planned.

The results of engagement reviews are discussed with the engagement partner and staff personnel responsible for the engagement.

The inspection team reports its findings and recommendations to the Office Tax PIC who will then discuss with Regional and Firm wide PICs and ultimately, the managing partner.

The tax partner must correct specific deficiencies noted in the inspection and should address in writing general comments for improvement.

The PIC is responsible for determining that planned corrective actions were taken and reporting to all partners the extent of compliance.



## *QUALITY CONTROL MANUAL*

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### **PROVIDING TAX ADVICE TO CLIENTS**

#### **General Principles Regarding Advice**

All advice provided to clients on matters of taxation, whether provided orally or in writing, is tax advice. Practitioners should assume that all advice, informal or formal, will be relied upon by the client. Any inaccuracy of such advice can subject the client, and therefore the Firm, to substantial liability. Accordingly, no advice should be provided to a client unless the issues involved have been properly analyzed and researched and there has been an opportunity to reach a well-reasoned conclusion. In the event advice must be given before there has been an opportunity to perform a complete analysis, the advisor must clearly inform the recipient of the advice that the conclusion is preliminary and subject to revision. Such communication should be documented in our files.

Review of advice (as discussed below) is not merely a device for risk management. It is also an important tool in improving the quality, breadth, creativity and applicability of the advice provided to the client. Reviewers should treat the review process as an opportunity to enhance and expand client service.

Clients may not be sophisticated in tax matters and therefore may be prone to misinterpret or misapply tax advice. We should take precautions to minimize the chances of such misapplication or misinterpretation. Especially in the case of any advice that is provided orally, the practitioner must clearly state the limitations of the advice provided and provide a discussion that places the advice in context in a manner that will reduce the probability of its incorrect use.

Proper review and documentation of tax advice is essential to maintaining adequate quality control. Documentation should be shared with the client in order to confirm conclusions, eliminate confusion as to assumptions and provide tangible evidence of the work that has been performed in the event there is any question regarding billing. Providing documentation to the client can also be useful in clarifying to the client that tax advice is a matter of judgment and may be not absolute.

The Firm strives to provide the most accurate and relevant possible tax advice, but it does not guarantee that advice. If the client appears to be treating our advice as a guarantee of any type, the fact that we do not provide any such guarantee should be made clear.

#### **Definition of Tax Advice**

Tax advice consists of any opinion, conclusion, presentation, recommendation or explanation involving tax knowledge. What constitutes tax advice cannot be precisely defined. Normally, if research or reasoning is required, the result is tax advice. Tax advice does not include routine letters not involving reasoning or conclusions with respect to the client's tax liability. For example, a tax return transmittal letter or extension request is not tax advice. Any doubts should be resolved in favor of treating the material as tax advice.

Tax advice may be contained in (without limitation) the following:



## *QUALITY CONTROL MANUAL*

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- Letters to clients, including proposals to perform services;
- Email correspondence with clients;
- Letters to third parties such as attorneys, the IRS, state taxing authorities and the like;
- Protests and memoranda prepared for conferences with taxing authorities;
- Requests for rulings and technical advice;
- Interoffice or internal memoranda;
- Management letters;
- Tax opinions (Firm policy is to issue opinions in limited situations);
- Materials presented and discussions relating to tax strategies;
- Forecasts and projections;
- Oral statements made during meetings with the client or other individuals involved in a matter;
- Oral statements made during meetings with the IRS; and
- Statements made in telephone conversations.

Photocopies of pages from a tax service, when unaccompanied by original written work product, do not constitute tax advice and should not be provided to clients. Furnishing such undigested material can lead to client misunderstandings and misinterpretations. Furthermore, it implies that all tax issues can be resolved merely by subscribing to a tax service. It may be appropriate (in certain situations) to provide the client with copies of primary authorities such as regulations or cases in support of conclusions that have previously been explained to the client.

All tax memos must be prepared using the approved template located in the Tax Portal (see Tax Memorandums page). In compliance with the policy below, all memos must have the names of the signoff partners either on the memo or listed at the end using the “hidden” function. All tax memos must be saved by Word Processing in the Word Processing drive (or similar drive per office) in “read only” format. Final copies of technical memos should be saved with the client’s documents in GoFileRoom.

Any document, including tax advice, which leaves the office that should be on letter head, **MUST** be given to the Word Processing department.



## *QUALITY CONTROL MANUAL*

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Upon final approval of any technical document, a copy must be saved to DMS as a “technical document”.

### **Documenting and Reviewing Tax Advice**

All tax advice rendered to or on behalf of clients must be documented in writing and reviewed as set forth in this section. Documentation and review adds value for the client by clarifying assumptions, analysis and conclusions and providing an opportunity further to enhance planning.

### **Documenting and Reviewing Oral Tax Advice**

- Incidental oral tax advice consists of advice involving amounts of tax that are not significant to the client; advice regarding possible consequences of various courses of action in the process of “brainstorming” or otherwise carrying on hypothetical discussions for the purpose of devising a general approach to a tax issue; advice regarding basic or general principles of tax law with respect to clear issues; and other matters that the responsible Partner views as not being highly material to the client’s position. All other oral tax advice must be treated as significant tax advice.
- Significant oral tax advice must be documented (typically in a memorandum to the file) and reviewed after it is rendered. That review should take place promptly after the advice is rendered. That review should be conducted in the same manner as the review of any other written tax advice (as discussed further below).
- In the case of incidental oral tax advice given by a Partner, documentation is in the Partners’ discretion. In the case of incidental oral tax advice given by a nonpartner, the advice must be discussed with a Partner, who will determine whether it should be documented.

### **Documenting and Reviewing Written Tax Advice (other than e-mails)**

Review of written tax advice (“WTA”) is the final protection against providing inaccurate, incomplete or incorrect advice. Accordingly, all WTA prepared by any person shall be reviewed before release in the manner set forth below. The procedures below are intended to avoid creating an undue burden without jeopardizing the quality of the Firm’s written work product.

- A permissible reviewer shall be a Tax Partner or an approved Tax Manager having significant expertise and regularly working in the area that is the subject of the WTA, typically including a member of the tax consulting group in that area.
- Each item of WTA shall be reviewed by at least one permissible reviewer in addition to the preparer of the WTA. If the WTA involves more than one subject area, it must be reviewed by at least one permissible reviewer in each area involved. This policy applies even if it is necessary to obtain review from an individual outside the office of the original preparer. Each reviewer must be cc'd on the tax advice memorandum as a proof to word processing that the



## QUALITY CONTROL MANUAL

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document was properly reviewed. Word Processing will not release technical memoranda without the proper sign offs or cc's indicated.

- It is the responsibility of the preparer of WTA to locate and use the services of the appropriate reviewer or reviewers. In the event a reviewer determines that an item of WTA is outside the scope of his or her expertise, it is the responsibility of that reviewer to inform the preparer promptly.

### **Review Standards**

The reviewer should ascertain the advice is technically correct and that it is expressed properly and clearly. It should conform to the Firm's standards of quality, both in technical content and writing quality and clarity. The manner of presentation greatly affects its comprehension by the client and the reputation of the Firm for high quality tax work.

### **Circular 230 Sections 10.35 & 10.37 - Applies to any Written Tax Advice**

There are other types of written advice; however, Marcum LLP has not practiced in those areas (e.g., federal tax results of issuing state and local bonds).

*Covered Opinion: Marcum does not issue this type of advice (as of now)*

Opinions regarding or done as:

- Listed Transactions
- Principal purpose transaction – tax avoidance or evasion. Excluded from this is advice where transactions claiming tax benefits are consistent with the statute and Congressional purpose.
- Significant purpose transaction – tax avoidance or evasion.
- Reliance Opinion – if subject to confidentiality or contractual protection or has a significant impact upon the federal tax treatment (see below).
- Marketed Opinion - if subject to confidentiality or contractual protection.  
Not a covered opinion if advising that the transaction will not provide the purported tax benefit.

### **Marketed Opinion: Marcum – Does NOT Issue This Type of Advice**

Used to promote, recommend, market a plan or investment to persons other than those with in the professionals Firm a plan or investment strategy.



## QUALITY CONTROL MANUAL

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### **Reliance Opinion:**

Marcum may issue this type of advice and then the rules regarding covered opinions apply. This must be a written letter or memo (accompanied by an appropriate cover letter). E-mail may NOT be used for providing a Reliance Opinion.

- More likely than not (50% or better likelihood of prevailing upon challenge).
- Provides penalty protection.
- Addresses “all federal tax issues.”
- Involves significant federal tax issue(s) and could have a significant impact upon the federal tax treatment. A federal tax issue is “significant” if the IRS has a reasonable basis for challenge. If the advice concludes the IRS has NO reasonable basis for challenge, then it does not have a significant tax issue and therefore is not a covered opinion.
- A reliance opinion DOES NOT include opinions filed with the SEC.
- Must comply with the due diligence of a covered opinion.
- Limited scope reliance opinion will address only those items tax issues discussed within the opinion; however, with regard to the limited scope tax issues the above Reliance Opinion rules will apply, except that not all Federal tax issues will be addressed (3<sup>rd</sup> bullet).

Essentially, this written advice must address every Federal tax issue that can arise with regard to the discussion in the memo. Limited scope written advice will only cover those tax issues specifically discussed in the written advice.

See Sections in the Quality Control Manual for Providing Tax Advice to Client Procedures on the following topics:

- A. [Comfort Letters](#)
- B. [Law Enforcement Inquires](#)
- C. [Section 6694 Penalties](#)



## *QUALITY CONTROL MANUAL*

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### **COMFORT LETTERS**

A comfort letter is a letter from a bank, lender, insurance company, governmental agency, etc. (a third party) that requests the CPA to “confirm” or “verify” certain information generally related to the taxpayer’s income tax return. For example: taxable income, self-employed income, projections of income, etc.

The sender of such a comfort letter is a “third party” and not the client. Rule 301 of the AICPA Code of Professional Conduct prohibits a member from disclosing confidential client information without the specific consent of the client. IRC Sec 7216 makes it a crime to disclose client tax return information to a third party without signed written consent from the client.

Requests that the CPA “confirm” or “verify” certain information suggests that the CPA has “audited” or otherwise “verified” the information. Circular 230, Section 10.34(d) (Relying on information furnished by clients) and the AICPA Statement on Standards for Tax Services No. 3 (Certain Procedural Aspects of Preparing Returns) allow a CPA to rely on information furnished by the taxpayer.

These due diligence standards are not sufficient when being asked to verify, certify or otherwise validate information presented on a tax return to a third party. Certification of a client’s income is in the context of a limited scope attest engagement.

Interpretation No. 2, of Attest Engagements, Section 101 prohibits a CPA from providing any assurance on matters related to solvency.

We will not respond directly to a third party. We may respond to our client (see sample letter in DMS – Form [30-930](#)). We will not “certify” or “verify” any information – even to clients.



## *QUALITY CONTROL MANUAL*

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### **LAW ENFORCEMENT INQUIRIES**

Whenever a federal and/or state law enforcement agent(s) contacts you (either in person, telephonically, or in writing) regarding Marcum, Marcum's partners, Marcum's employees, Marcum's agents, or Marcum's clients, the firm policy is that you are NOT to communicate with the law enforcement agent without first contacting Marcum's internal legal counsel for instructions. Anything you say can be taken as an admission against the firm and, in some contexts, a refusal to communicate with law enforcement could lead to a negative inference against Marcum.

If a law enforcement agent contacts you inside or outside of the office, politely decline to communicate at that time except to either invite the law enforcement agent to your office or to have a telephone call during normal business hours at a more convenient time and/or date. Then contact Marcum's internal counsel. It is within your rights to act in this manner and will make certain that at the later meeting scheduled with a law enforcement agent, you will be accompanied by Marcum's legal counsel, who will be there to protect yours and Marcum's interests. This course of action is a necessary step in ensuring that you don't unknowingly waive any applicable legal privileges or incriminate yourself.



## QUALITY CONTROL MANUAL

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### **SECTION 6694 PENALTIES**

As tax preparers we face more substantive penalties under the provisions of IRC § 6694. This provision of *The Small Business and Work Opportunities Tax Act of 2007* makes us, as preparers a “gatekeeper” for the IRS. The guidance was further modified with the *Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (the 2008 Act.)* Under the most recent provisions, substantial authority must exist for tax positions taken.

Until further guidance is issued, solely for purposes of section 6694(a), “substantial authority” has the same meaning as in § 1.6662-4(d)(2) (or any successor provision) of the accuracy-related penalty regulations. The analysis prescribed by § 1.6662-4(d)(3)(i) through (ii) (or any successor provisions) applies for purposes of determining whether substantial authority is present. The authorities considered in determining whether there is substantial authority for a position are those authorities described in § 1.6662-4(d)(3)(iii) (or any successor provision).

There is substantial authority for a position for purposes of section 6694 if the taxpayer is the subject of a “written determination” as provided in § 1.6662-4(d)(3)(iv)(A). In the case of a tax return preparer, however, a written determination with a misstatement or omission of material fact is substantial authority unless the tax return preparer knew or should have known of the misstatement or omission of material fact when the return or claim for refund was filed. The applicability of court cases to the taxpayer’s situation by reason of the taxpayer’s residence in a particular jurisdiction is not taken into account in determining whether there is substantial authority for a position in accordance with § 1.6662-4(d)(3)(iv)(B). Notwithstanding the preceding sentence, there is substantial authority for a position if the position is supported by controlling precedent of a United States Court of Appeals to which the taxpayer has a right of appeal with respect to the position. Finally, there is substantial authority for a position only if there is substantial authority on the date the return or claim for refund is deemed prepared, as prescribed by § 1.6694-1(a)(2), or there was substantial authority on the last day of the taxable year to which the return relates.

Conclusions reached in treatises, legal periodicals, legal opinions, or opinions rendered by tax professionals (including tax return preparers) are not authority. The authorities underlying such expressions of opinion, if applicable to the facts of a particular case, however, may give rise to substantial authority for the position. Solely for purposes of section 6694(a), a tax return preparer nevertheless will be considered to have met the standard in section 6694(a)(2)(A) if the tax return preparer relies in good faith and without verification on the advice of another advisor, another tax return preparer, or other party. Factors used in evaluating a tax return preparer’s good faith reliance on the advice of another are found in § 1.6694-2(e)(5).

When dealing with potential disclosure issues, it is important not to make unreasonable demands on the client or for a preparer or data gatherer to take hard and fast positions. It is the senior manager or partner who will make the ultimate decision whether to disclose and how to complete Form 8275 or Form 8275-R, as appropriate.



## *QUALITY CONTROL MANUAL*

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Preparers and reviewers should do all they can to accumulate the information and to frame the disclosure issue for further consideration by the relationship partner, senior manager, or return signer.



## *QUALITY CONTROL MANUAL*

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### **PROCEDURES FOR ISSUING WRITTEN TAX ADVICE**

**ANY RELIANCE OPINION MARCUM ISSUES SHOULD BE A LIMITED SCOPE RELIANCE OPINION AND MUST STATE THAT IT IS MORE LIKELY THAN NOT THAT THE DEFERRAL TAX ISSUE ADDRESSED WOULD BE RESOLVED IN THE TAXPAYER'S FAVOR.**

**FURTHER, THE RELIANCE OPINION MUST STATE THAT THE OPINION CANNOT BE USED FOR AVOIDING PENALTIES.**

Written advice which will not fall under the covered opinion (reliance opinion) rules must contain the legend:

#### **IRS CIRCULAR 230 DISCLOSURE NOTICE:**

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this email, memo, correspondence and/or its attachments, unless otherwise specifically stated, is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the IRC, or (ii) promoting, marketing, or recommending to another party any transaction or matter that is contained in or accompanying this document

Any Reliance Opinion must be reviewed by a tax partner, in addition to the tax engagement partner who wrote or reviewed the memo. Therefore, two tax partners must review Reliance Opinions.

Anytime an opinion is issued, the Quality Control Team must review the opinion and sign off an approval on the document.

#### **Other Written Advice:**

- Must have the “disclaimer” legend (automatically appears in e-mails, nothing further to do for e-mails).
- The disclaimer reads as follows: **IRS CIRCULAR 230 DISCLOSURE NOTICE:** To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this letter, memo or email and/or its attachments , unless otherwise specifically stated, is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the IRC, or (ii) promoting, marketing, or recommending to another party any transaction or matter that is contained in or accompanying this document
- The “disclaimer” is in a 12 point font, please do not type in a font larger than 12 point as it is a requirement that the “disclaimer” not be in a typeface smaller than the type face of any discussion in the written advice.



## *QUALITY CONTROL MANUAL*

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- Must use reasonable facts and assumptions.
- Must not unreasonably rely upon representations, statements, etc. of the taxpayer or any other person.
- Must consider all relevant facts.
- Must not use examination probability.



## *QUALITY CONTROL MANUAL*

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### **CLIENT CONFIDENTIALITY IN TAX MATTERS**

We are obligated by our professional responsibilities to protect the information we obtain in the course of our representation of our clients. In addition, our clients will obtain the most favorable possible results only if they are able to discuss matters with us candidly, which require that they have confidence in our discretion.

While the CPA industry is exempt from the provisions of the Gramm-Leach-Bliley Act, CPA's are not safeguarded from certain provisions within the Act which includes:

- Securing client information and
- Having written procedures to protect client financial information.

The following Firm-wide security measures should adequately meet these requirements.

### **Confidentiality and Disclosure of Tax Information**

In all communication with clients and others, we must maintain the confidentiality of tax information. The level of care we exercise in this regard must be sufficient to avoid imposition of penalties under IRC § 7216 in addition to our other ethical and prudential obligations. (See Best Practices Manual Section 17 and other §7216 related documents in DMS for additional guidance.)

- We shall disclose tax matters when the client specifically authorizes us to do so in order to further its own purposes, except where we are under an additional obligation that prevents disclosure.
- We shall disclose tax matters we are legally required to disclose, for example where required to do so by subpoena or administrative order. However, before making any such disclosure, to the extent practicable and not prohibited by law, we shall provide the client with sufficient notice to afford the client an opportunity to contest the legal requirement to disclose. We shall provide the client (or, if the client chooses, the client's counsel) an opportunity to review all items to be disclosed before disclosure.
- In some circumstances, we are not required to disclose information but can later be required to disclose it (for example, when an IRS examiner requests workpapers but has not yet formally requested them through District Counsel). In those circumstances, we shall consult with the client to determine the appropriate course of action.
- In any case where we will disclose tax information (other than in preparation of tax returns), a Tax Partner must review both the circumstances leading to disclose and the actual information being disclosed before disclosure takes place.



## *QUALITY CONTROL MANUAL*

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### **Disposal of Records Containing Personal Information**

We are to properly dispose of records containing personal information to ensure that an unauthorized person does not have access to the personal information of our clients.

Proper disposal includes the following:

- Shred (or arrange for shredding) the record before the disposal of the record or
- Destroy the personal identifying number contained in the record or
- Modify the record to make the identifying number unreadable or
- Take action consistent with commonly accepted industry practices that the Firm reasonably believes will ensure that no unauthorized person will have access to the information contained in the record.

Personal information is defined as any information concerning a natural persona which because of name, number, personal make or other identifier, can be used to identify such natural person. In relation, personal identifying information includes personal information in combination with the following:

- Social security number
- Driver's license
- Mother's maiden name
- Financial account number or code.

Any item containing the above information will need to be disposed of as discussed above. Most offices have engaged a company to shred all documents required to be shred. See office policy for further information on locked disposal boxes and timing to empty bins.

### **Furnishing Tax Information Forms to Third Parties**

We prepare Schedules K-1, Form 1099 and the like for clients as part of the tax return preparation process. We will provide sufficient copies to the client – with mailing envelopes if requested – so that they can provide the information as required to their investors, partners, etc. We will not, however, mail any tax information to a third party (such as a bank or mortgage company) on behalf of our clients. The investors, partners, bankers, et al are not our clients. To provide them with information directly is both a violation of our privacy policy and may unintentionally give the third party privities with respect to our work.



## *QUALITY CONTROL MANUAL*

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### **MARCUM LEADERSHIP**

See Sections in the Quality Control Manual for Marcum Leadership Procedures on the following topics:

- A. [Marcum National Tax Department Partner Roles and Responsibilities](#)
- B. [Tax Department Organization Chart](#)
- C. [Software Team Leaders](#)
  - a. [National List of Collators GoSystem RS and ProSystem fx Administration](#)



## *QUALITY CONTROL MANUAL*

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### **MARCUM NATIONAL TAX DEPARTMENT PARTNER ROLES AND RESPONSIBILITIES**

#### **Line Partners**

- Maintain leading edge knowledge in practice area through outside training and other means
- Stay well versed in industry/ general business matters that impact clients and the Firm
- Attract new business to the Firm and create challenging opportunities to broaden and grow technical, business and relationship building competence
- Cross-sell other service lines into existing client base
- Develop, supervise, train, coach and advocate for staff
- Recognize complex technical issues, reach appropriate conclusions using outstanding judgment, and apply authority to support conclusions
- Convey the importance of the Firm's commitment to quality growth to all staff members
- Maintain and enhance client relationships
- Review and sign tax returns
- Perform and/or review tax research
- Write and/or review tax memos and other tax correspondence
- Bill and collect

#### **National Partner in Charge (aka Firm-wide PIC, hereinafter referred to as PIC)**

- Visionary for the department
- Empowered with the overall responsibility for managing growth, profitability and overall resources of the Tax
- Recruitment of new tax talent to the Firm
- Mentoring and development of existing tax staff and partners
- Responsible for leading new product/service department ideas for the Tax Department
- Oversight of tax training and technical issues as they relate to members of the tax department
- Meets monthly (quarterly) with tax partners to coach and counsel them on individual performance
- Responsible for overall client satisfaction (both internal and external clients of the Firm)
- Helps promote cross selling of tax services Firm-wide
- Promotes cross selling of non-tax services within the tax department.
- Quality Control/Risk Management
- Client acceptance/retention
- Policies and procedures

#### **Office Partner in Charge**

- Oversight and assistance of line partners within the office
- Enforcement of policies and procedures
- Oversight of day to day management of workflow
- Human Resources and staffing



## *QUALITY CONTROL MANUAL*

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- Coordination/identification of resources
- Problem resolution
- Staffing and workflow issues
- Local area marketing
- Client service

### **Service Line Leader**

- Group specific training
- Staffing
- Marketing (cross-sell)
- Client service
- Technical updates (internal and external)
- Regular contributions to Firm-wide publications
- Proposals
- Develop further expertise within groups

### **Industry Team Leader**

- Assess strategic and technical needs and develop plans to meet them
- Coordinate and develop specific industry related training
- Develop and implement marketing plan
- Coordinate with assurance and advisory on Firm-wide industry plan
- Coordinate services within other tax departments
- Prepare internal technical updates
- Prepare Flashes/articles for external publication
- Develop industry specific proposals (and engagement letter language where needed)
- Provide technical consulting for other Marcum professionals (or designate other appropriate team member to do so)

### **Operational Teams**

- Tax Portal – Update with tax department specific documents, update engagement letters, assess need for changes to materials
- Software Updates
- E-Filing - Provide department with State and Federal requirements for e-filing and e-payments. Ensure updates are included within the Tax Portal.
- Integration - Instruct policy to new firm attendees. Create due diligence package. Arrange for regular weekly calls to ensure coordination with other departments is being followed. Update integration chart. Coordinate timing and transfer of duties
- Human Resources
- Training - Coordinate schedule with Training department. Review presentations and assist teachers. Suggest classes. Ensure presentations are announced and scheduled



*QUALITY CONTROL MANUAL*

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**NATIONAL LIST OF COLLATORS FOR GO SYSTEM RS AND PRO SYSTEM FX  
ADMINISTRATION**



*QUALITY CONTROL MANUAL*

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**TAX DEPARTMENT ORGANIZATIONAL CHART**



## *QUALITY CONTROL MANUAL*

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### **Software Team Leaders**

The list of applicable software leaders for each office is located on the Intranet ([click here](#)).

The procedures for the team leaders are as follows:

- A question or problem arises in an office the staff person contacts the team leader for that office to see if they can help. If the office team leader is unavailable then the staff person should contact a software team leader in another office.
- If the team leader can't resolve or answer the question then the team leader can contact another team leader or the software vendor by email or phone or have the staff person call the software vendor's help desk.
- If the problem or question is something that could affect others then the team leader or staff person will send the question or problem with **resolution to Michael Novak**
- At the end of tax season the team leaders will meet and go through their areas and make a list of items for us to communicate to the software vendors for follow-up and updates.



## QUALITY CONTROL MANUAL

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### **CODE OF PROFESSIONAL ETHICS – CODE OF CONDUCT FROM AICPA**

Section 500 – Other Responsibilities and Practices

#### **ET Section 501 – Acts Discreditable**

A member shall not commit an act discreditable to the profession

#### **Interpretations Under Rule 501 —*Acts Discreditable***

##### **501-1—Response to requests by clients and former clients for records.**

#### **Terminology**

The following terms are defined subsequently solely for use with this interpretation:

- The term *client* includes current and former clients.
- *Client-provided records* are accounting or other records belonging to the client that were provided to the member, by or on behalf of, the client, including hardcopy or electronic reproductions of such records.
- *Member-prepared records* are accounting or other records that the member was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, with the result that the client's financial information is incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that are proposed or prepared by the member as part of an engagement (for example, an audit).
- *Member's work products* are deliverables as set forth in the terms of the engagement, such as tax returns.
- *Member's working papers* are all other items prepared solely for purposes of the engagement and include items prepared by the
- member, such as audit programs, analytical review schedules, and statistical sampling results and analyses, and
- client, at the request of the member and reflecting testing or other work done by the member.

#### **Interpretation**

Members must comply with the rules and regulations of authoritative regulatory bodies, such as the member's state board(s) of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory body. For example, a member's state board(s) of accountancy may not permit a member to withhold certain records notwithstanding



## QUALITY CONTROL MANUAL

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fees due to the member for the work performed. Failure to comply with the more restrictive provisions contained in the rules and regulations of the applicable regulatory body concerning the return of certain records would constitute a violation of this interpretation.

Client-provided records in the member's custody or control should be returned to the client at the client's request.

Unless a member and the client have agreed to the contrary, when a client makes a request for member-prepared records, or a member's work products that are in the custody or control of the member or the member's firm (member) that have not previously been provided to the client, the member should respond to the client's request as follows:

- Member-prepared records relating to a completed and issued work product should be provided to the client, except that such records may be withheld if there are fees due to the member for the specific work product.
- Member's work products should be provided to the client, except that such work products may be withheld
  - if there are fees due to the member for the specific work product;
  - if the work product is incomplete;
  - for purposes of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
  - if threatened or outstanding litigation exists concerning the engagement or member's work.

The member is under no obligation to retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed.

Once the member has complied with these requirements, he or she is under no ethical obligation to comply with any subsequent requests to again provide such records or copies of such records. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the member should comply with an additional request to provide such records.

Member's working papers are the member's property and need not be provided to the client under provisions of this interpretation; however, such requirements may be imposed by state and federal statutes and regulations, and contractual agreements.

In connection with any request for client-provided records, member-prepared records, or a member's work products, the member may



## QUALITY CONTROL MANUAL

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- charge the client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that such fee be paid prior to the time such records are provided to the client,
- provide the requested records in any format usable by the client, and
- make and retain copies of any records returned or provided to the client.

The member is not required to convert records that are not in electronic format to electronic format or to convert electronic records into a different type of electronic format. However, if the client requests records in a specific format and the records are available in such format within the member's custody and control, the client's request should be honored. In addition, the member is not required to provide the client with formulas, unless the formulas support the client's underlying accounting or other records, or the member was engaged to provide such formulas as part of a completed work product.

Where a member is required to return or provide records to the client, the member should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made. The fact that the statutes of the state in which the member practices grant the member a lien on certain records in his or her custody or control does not relieve the member of his or her obligation to comply with this interpretation.

### **501-2—Discrimination and harassment in employment practices**

Whenever a member is finally determined by a court of competent jurisdiction to have violated any of the antidiscrimination laws of the United States or any state or municipality thereof, including those related to sexual and other forms of harassment, or has waived or lost his/her right of appeal after a hearing by an administrative agency, the member will be presumed to have committed an act discreditable to the profession in violation of rule 501 [ET section 501.01].

### **501-3—Failure to follow standards and/or procedures or other requirements in governmental audits**

Engagements for audits of government grants, government units or other recipients of government monies typically require that such audits be in compliance with government audit standards, guides, procedures, statutes, rules, and regulations, in addition to generally accepted auditing standards. If a member has accepted such an engagement and undertakes an obligation to follow specified government audit standards, guides, procedures, statutes, rules and regulations, in addition to generally accepted auditing standards, he or she is obligated to follow such requirements. Failure to do so is an act discreditable to the profession in violation of rule 501 [ET section 501.01], unless the member discloses in his or her report the fact that such requirements were not followed and the reasons therefor.



## QUALITY CONTROL MANUAL

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### **501-4—Negligence in the preparation of financial statements or records**

A member shall be considered to have committed an act discreditable to the profession in violation of rule 501 [ET section 501.01] when, by virtue of his or her negligence, such member—

1. Makes, or permits or directs another to make, materially false and misleading entries in the financial statements or records of an entity; or
2. Fails to correct an entity's financial statements that are materially false and misleading when the member has the authority to record an entry; or
3. Signs, or permits or directs another to sign, a document containing materially false and misleading information.

### **501-5—Failure to follow requirements of governmental bodies, commissions, or other regulatory agencies**

Many governmental bodies, commissions or other regulatory agencies have established requirements such as audit standards, guides, rules, and regulations that members are required to follow in the preparation of financial statements or related information, or in performing attest or similar services for entities subject to their jurisdiction. For example, the Securities and Exchange Commission, Federal Communications Commission, state insurance commissions, and other regulatory agencies, such as the Public Company Accounting Oversight Board, have established such requirements.

If a member prepares financial statements or related information (for example, management's discussion and analysis) for purposes of reporting to such bodies, commissions, or regulatory agencies, the member should follow the requirements of such organizations in addition to generally accepted accounting principles. If a member agrees to perform an attest or similar service for the purpose of reporting to such bodies, commissions, or regulatory agencies, the member should follow such requirements, in addition to generally accepted auditing standards (where applicable). A material departure from such requirements is an act discreditable to the profession, unless the member discloses in the financial statements or his or her report, as applicable, that such requirements were not followed and the reasons therefore.

### **501-6—Solicitation or disclosure of CPA examination questions and answers**

A member who solicits or knowingly discloses the May 1996 or later Uniform CPA Examination question(s) and/or answer(s) without the written authorization of the AICPA shall be considered to have committed an act discreditable to the profession in violation of rule 501 [ET section 501.01].

### **501-7—Failure to file tax return or pay tax liability**

A member who fails to comply with applicable federal, state, or local laws or regulations regarding the timely filing of his or her personal tax returns or tax returns of the member's firm, or the timely remittance of all payroll and other taxes collected on behalf of others, may be considered to have committed an act discreditable to the profession in violation of rule 501 [ET section 501.01].



## QUALITY CONTROL MANUAL

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### **501-8—Failure to Follow Requirements of Governmental Bodies, Commissions, or Other Regulatory Agencies on Indemnification and Limitation of Liability Provisions in Connection With Audit and Other Attest Services**

Certain governmental bodies, commissions, or other regulatory agencies (collectively, *regulators*) have established requirements through laws, regulations, or published interpretations that prohibit entities subject to their regulation (*regulated entity*) from including certain types of indemnification and limitation of liability provisions in agreements for the performance of audit or other attest services that are required by such regulators or that provide that the existence of such provisions causes a member to be disqualified from providing such services to these entities. For example, federal banking regulators, state insurance commissions, and the Securities and Exchange Commission have established such requirements.

If a member enters into, or directs or knowingly permits another individual to enter into, a contract for the performance of audit or other attest services that are subject to the requirements of these regulators, the member should not include, or knowingly permit or direct another individual to include, an indemnification or limitation of liability provision that would cause the regulated entity or a member to be in violation of such requirements or that would cause a member to be disqualified from providing such services to the regulated entity. A member who enters into, or directs or knowingly permits another individual to enter into, such an agreement for the performance of audit or other attest services that would cause the regulated entity or a member to be in violation of such requirements, or that would cause a member to be disqualified from providing such services to the regulated entity, would be considered to have committed an act discreditable to the profession.

Members should also consult Ethics Ruling No. 94, "Indemnification Clause in Engagement Letters," of ET section 191, *Ethics Rulings on Independence, Integrity, and Objectivity* (AICPA, *Professional Standards*, vol. 2, [ET sec. 191 par. .188–.189](#)) under Rule 101, *Independence* and Ethics Ruling No. 102, "Indemnification of a Client," of ET section 191, *Ethics Rulings on Independence, Integrity, and Objectivity* (AICPA, *Professional Standards*, vol. 2, [ET sec. 191 par. .204–.205](#)) under Rule 101, *Independence*, for guidance related to use of indemnification clauses in engagement letters and the impact on a member's independence.

### **501-9—Confidential Information Obtained From Employment or Volunteer Activities**

A member should maintain confidentiality of his or her employer's or firm's (employer) confidential information and should not use or disclose any confidential employer information obtained as a result of an employment relationship (for example, discussions with the employer's vendors, customers, or lenders). This includes, but is not limited to, any confidential information pertaining to a current or previous employer, subsidiary, affiliate, or parent thereof, as well as any entities for which the member is working in a volunteer capacity. For purposes of this interpretation, *confidential employer information* is any proprietary information pertaining to the employer or any organization for whom the member may work in a volunteer capacity that is not known to be available to the public and is obtained as a result of such relationships.



## QUALITY CONTROL MANUAL

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A member should be alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member. The member should also take reasonable steps to ensure that staff under his or her control or others within the employing organization and persons from whom advice and assistance is obtained are aware of the confidential nature of the information.

When a member changes employment, a member should not use confidential employer information acquired as a result of the prior employment relationship to his or her personal advantage or the advantage of a third party, such as a current or prospective employer. The requirement to maintain confidentiality of an employer's confidential information continues even after the end of the relationship between a member and the employer. However, the member is entitled to use experience and expertise gained through prior employment relationships.

A member would be considered to have committed an act discreditable to the profession if the member discloses or uses any confidential employer information acquired as a result of employment or volunteer relationships without the proper authority or specific consent of the employer or organization for whom the member may work in a volunteer capacity, unless there is a legal or professional responsibility to use or disclose such information.

The following are examples when members are permitted or may be required to disclose confidential employer information or when such disclosure may be appropriate:

- a. Disclosure is permitted by law and authorized by the employer.
- b. Disclosure is required by law, for example, to
  - i. comply with a validly issued and enforceable subpoena or summons or
  - ii. inform the appropriate public authorities of violations of law that have been discovered.
- c. There is a professional responsibility or right to disclose information, when not prohibited by law, to
  - i. initiate a complaint with, or respond to any inquiry made by, the professional ethics division or trial board of the AICPA or a duly constituted investigative or disciplinary body of a state CPA society, board of accountancy, or other regulatory body;
  - ii. protect the professional interests of a member in legal proceedings;
  - iii. comply with professional standards and other ethics requirements; or
  - iv. report potential concerns regarding questionable accounting, auditing, or other matters to the employer's confidential complaint hotline or those charged with governance. Members should also consider Interpretation No. 102-4, "Subordination of Judgment by a Member," under Rule 102, *Integrity and Objectivity* [sec. 102 par. .05], for additional guidance.



## QUALITY CONTROL MANUAL

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- d. Disclosure is permitted on behalf of the employer to
  - i. obtain financing with lenders;
  - ii. deal with vendors, clients, and customers; or
  - iii. deal with the employer's external accountant, attorneys, regulators, and other business professionals.

In deciding whether to disclose confidential employer information, relevant factors to consider include, but are not limited to, the following:

- a. Whether all the relevant information is known and substantiated to the extent that it is practicable (when the situation involves unsubstantiated facts, incomplete information, or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any)
- b. Whether the parties to whom the communication may be addressed are appropriate recipients

A member may wish to consult with his or her legal counsel prior to disclosing, or determining whether to disclose, confidential employer information.

### **501-10—False, Misleading, or Deceptive Acts in Promoting or Marketing Professional Services**

A member in business who promotes or markets his or her abilities to provide professional services or makes claims about his or her experience or qualifications in a manner that is false, misleading, or deceptive will be considered to have committed an act discreditable to the profession, in violation of Rule 501 [sec. 501 par. .01]. A false, misleading, or deceptive promotion includes any claim or representation that would be likely to cause a reasonable person to be misled or deceived. This includes any representation about CPA licensure or any other professional certification or accreditation that is not in compliance with the requirements of the relevant licensing authority or designating body.

### **501-11—Use of the CPA Credential**

A member should refer to applicable state accountancy laws and board of accountancy rules and regulations for guidance regarding the use of the CPA credential. A member who fails to follow the accountancy laws, rules, and regulations regarding the use of the CPA credential in all the jurisdictions in which the CPA practices would be considered to have used the CPA credential in a manner that is false, misleading, or deceptive and in violation of Rule 501 [sec. 501 par. .01].



## QUALITY CONTROL MANUAL

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### **ET Section 502 – Advertising and Other Forms of Solicitation**

A member in public practice shall not seek to obtain clients by advertising or other forms of solicitation in a manner that is false, misleading, or deceptive. Solicitation by the use of coercion, over-reaching, or harassing conduct is prohibited.

### **Interpretations Under Rule 502 —Advertising and Other Forms of Solicitation**

#### **502-1 – [deleted]**

#### **502-2 – False, misleading or deceptive acts in advertising or solicitation**

Advertising or other forms of solicitation that are false, misleading, or deceptive are not in the public interest and are prohibited. Such activities include those that—

1. Create false or unjustified expectations of favorable results.
2. Imply the ability to influence any court, tribunal, regulatory agency, or similar body or official.
3. Contain a representation that specific professional services in current or future periods will be performed for a stated fee, estimated fee or fee range when it was likely at the time of the representation that such fees would be substantially increased and the prospective client was not advised of that likelihood.
4. Contain any other representations that would be likely to cause a reasonable person to misunderstand or be deceived.

#### **502-3 – [Deleted]**

#### **502-4 – [Deleted]**

#### **502-5—Engagements obtained through efforts of third parties.**

Members are often asked to render professional services to clients or customers of third parties. Such third parties may have obtained such clients or customers as the result of their advertising and solicitation efforts.

Members are permitted to enter into such engagements. The member has the responsibility to ascertain that all promotional efforts are within the bounds of the Rules of Conduct. Such action is required because the members will receive the benefits of such efforts by third parties, and members must not do through others what they are prohibited from doing themselves by the Rules of Conduct.

#### **502-6—Use of the CPA Credential.**

A member should refer to applicable state accountancy laws and board of accountancy rules and regulations for guidance regarding the use of the CPA credential. A member who fails to follow the accountancy laws, rules, and regulations regarding the use of the CPA credential in all the



## QUALITY CONTROL MANUAL

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jurisdictions in which the CPA practices would be considered to have used the CPA credential in a manner that is false, misleading, or deceptive and in violation of Rule 502 [sec. 502 par. .01].

### **ET Section 503 – Commissions and Referral Fees**

#### *A. Prohibited commissions*

A member in public practice shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the member or the member's firm also performs for that client

- a. an audit or review of a financial statement; or
- b. a compilation of a financial statement when the member expects, or reasonably might expect, that a third party will use the financial statement and the member's compilation report does not disclose a lack of independence; or
- c. an examination of prospective financial information.

This prohibition applies during the period in which the member is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

#### *B. Disclosure of permitted commissions*

A member in public practice who is not prohibited by this rule from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the member recommends or refers a product or service to which the commission relates.

#### *C. Referral fees*

Any member who accepts a referral fee for recommending or referring any service of a CPA to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

### **ET Section 504 – [Deleted]**

### **ET Section 505 – Form of Organization and Name**

A member may practice public accounting only in a form of organization permitted by law or regulation whose characteristics conform to resolutions of Council.

A member shall not practice public accounting under a firm name that is misleading. Names of one or more past owners may be included in the firm name of a successor organization.

A firm may not designate itself as "Members of the American Institute of Certified Public Accountants" unless all of its CPA owners are members of the Institute.



## QUALITY CONTROL MANUAL

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### **Interpretations Under Rule 505 – Form of Organization and Name** **505-1 – [Deleted]**

#### **505-2 – Application of rules of conduct to members who own a separate business.**

A member in public practice may own an interest in a separate business that performs for clients any of the professional services of accounting, tax, personal financial planning, litigation support services, and those services for which standards are promulgated by bodies designated by Council (see paragraph .06 of section 92, *Definitions*). If the member, individually or collectively with his or her firm or with members of his or her firm controls the separate business (as defined in Financial Accounting Standards Board Accounting Standards Codification 810, Consolidation), the entity and all its owners (including the member) and employees must comply with all of the provisions of the Code of Professional Conduct. For example, in applying Rule 503, *Commissions and Referral Fees* [[ET section 503.01](#)], if one or more members individually or collectively can control the separate business, such business would be subject to rule 503 [[ET section 503.01](#)], its interpretations and rulings. With respect to an attest client, rule 101 [[ET section 101.01](#)] and all its interpretations and rulings would apply to the separate business, its owners and employees.

If the member, individually or collectively with his or her firm or members of his or her firm, does not control the separate business, the provisions of the Code would apply to the member for his or her actions but not apply to the entity, its other owners and employees. For example, the entity could enter into a contingent fee arrangement with an attest client of the member or accept commissions for the referral of products or services to such attest client.

#### **505-3 – Application of rule 505 to alternative practice structures.**

Rule 505, *Form of Organization and Name* [[ET section 505.01](#)], states, “A member may practice public accounting only in a form of organization permitted by law or regulation whose characteristics conform to resolutions of Council.” The Council Resolution (the Resolution) requires, among other things, that a majority of the financial interests in a firm engaged in attest services (as defined therein) be owned by CPAs. In the context of alternative practice structures (APS) in which (1) the majority of the financial interests in the attest firm is owned by CPAs and (2) all or substantially all of the revenues are paid to another entity in return for services and the lease of employees, equipment, and office space, questions have arisen as to the applicability of rule 505 [[ET section 505.01](#)].

The overriding focus of the Resolution is that CPAs remain responsible, financially and otherwise, for the attest work performed to protect the public interest. The Resolution contains many requirements that were developed to ensure that responsibility. In addition to the provisions of the Resolution, other requirements of the Code of Professional Conduct and bylaws ensure that responsibility:

Compliance with all aspects of applicable state law or regulation  
Enrollment in an AICPA-approved practice monitoring program



## QUALITY CONTROL MANUAL

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Compliance with the independence rules prescribed by Rule 101, *Independence* [[ET section 101.01](#)]

Compliance with applicable standards promulgated by Council-designated bodies (Rule 202, *Compliance With Standards* [[ET section 202.01](#)]) and all other provisions of the Code, including ET section 91, *Applicability*

Taken in the context of all the above-mentioned safeguards of the public interest, if the CPAs who own the attest firm remain financially responsible, under applicable law or regulation, the member is considered to be in compliance with the financial interests provision of the Resolution.

### **505-4 – Misleading Firm Names**

Rule 505 [[sec. 505 par. .01](#)] prohibits a member from practicing public accounting under a firm name that is misleading. A firm name would be considered misleading if the name contains any representation that would be likely to cause a reasonable person to misunderstand, or be confused about, the legal form of the firm or who the owners or members of the firm are, such as a reference to a type of organization or an abbreviation thereof that does not accurately reflect the form under which the firm is organized.

In addition, the member should consider the rules and regulations of his or her state board(s) of accountancy concerning misleading firm names that may be more restrictive than the requirements contained in this ethics interpretation.

### **505-5 – Common Network Brand in Firm Name**

Firms within a network sometimes share the use of a common brand or share common initials as part of the firm name. The sharing of a common brand name or common initials of a network as part of the member's firm name would not be considered misleading, provided the firm is a *network firm*, as defined in [paragraph .24](#) of ET section 92, *Definitions*.

The sharing of a common brand name or common initials of a network as the entire name of the member's firm would not be considered misleading, provided the firm is a *network firm*, as defined in [paragraph .24 of ET section 92](#), and shares one or more of the following characteristics with other firms in the network:

- Common control (as defined in Financial Accounting Standards Board Accounting Standards Codification 810, *Consolidation*) among the firms through ownership, management, or other means
- Profits or costs, excluding costs of operating the network; costs of developing audit methodologies, manuals, and training courses; and other costs that are immaterial to the firm
- Common business strategy that involves ongoing collaboration amongst the firms whereby the firms are responsible for implementing the network's strategy and are held accountable for performance pursuant to that strategy



## QUALITY CONTROL MANUAL

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- Significant part of professional resources
- Common quality control policies and procedures that firms are required to implement and that are monitored by the network

Members should refer to Interpretation No. [101-17](#), “Networks and Network Firms,” under Rule 101, *Independence* [[ET sec. 101 par. 19](#)], for independence requirements applicable to network firms.

See Sections in the Quality Control Manual for Code of Professional Ethics Procedures on the following topics:

A. [Tax Department Ethics](#)



## QUALITY CONTROL MANUAL

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### TAX DEPARTMENT ETHICS

We, as a Firm, and individually, must maintain the highest ethical standards of tax practice. Where the tax treatment of a particular item is completely clear, based, for example, on a Supreme Court decision, we will conform to the required treatment. Where, however, the tax treatment of a matter is not completely certain and where reasonable support exists, we will adopt the position that will benefit our clients.

In tax practice, we will be guided by:

- The Code of Professional Ethics of the AICPA and applicable State Societies as well as similar formulations of State Boards of Accountancy.
- The rules governing practice before the IRS (Treasury Department Circular No. 230, Revised).
- Opinion No. 13 of the AICPA Committee on Professional Ethics (“Committee”), which states:
  - It is the opinion of the Committee that the Code of Professional Ethics applies to the tax practice of members and associates except for Article 2, relating to technical standards and any other sections of the Code which relate only to examinations of financial statements requiring opinions or disclaimers.
  - The Committee is of the opinion that the statement, affidavit or signature of preparers required on tax returns, neither constitutes an opinion of financial statements nor requires a disclaimer within Article 2 of the Code.
  - In tax practice, a member or associate must observe the same standards of truthfulness and integrity as he is required to observe in any other professional work. This does not mean, however, that a member or associate may not resolve doubt in favor of his client as long as there is a reasonable support for his position.”
- The AICPA Statements on Standards for Tax Services (“SSTS”s) (updated in January 2010), which includes the following seven statements:
  - Statement No. 1: *Tax Return Positions*
  - Statement No. 2: *Answers to Questions on Returns*
  - Statement No. 3: *Certain Procedural Aspects of Preparing Returns*
  - Statement No. 4: *Use of Estimates*
  - Statement No. 5: *Departure from a Position Previously Concluded in an Administrative Proceeding or Court Decision*



## QUALITY CONTROL MANUAL

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- Statement No. 6: *Knowledge of Error: Return Preparation and Administrative Proceedings*
- Statement No. 7: *Form and Content of Advice to Taxpayers*
- The full text of the SSTs can be viewed at:

<http://www.aicpa.org/InterestAreas/Tax/Resources/StandardsEthics/StatementsonStandardsforTaxServices/Pages/default.aspx>

The SSTs have been written in as simple and objective a manner as possible. However, by their nature, ethical standards provide for an appropriate range of behavior that recognizes the need for interpretations to meet a broad range of personal and professional situations. The SSTs recognize this need by, in some sections, providing relatively subjective rules and by leaving certain terms undefined. These terms and concepts are generally rooted in tax concepts, and therefore should be readily understood by tax practitioners. It is, therefore, recognized that the enforcement of these rules, as part of the AICPA's Code of Professional Conduct Rule 201, General Standards, and Rule 202, Compliance with Standards, will be undertaken with flexibility in mind and handled on a case-by-case basis. Members are expected to comply with them.

The SSTs reflect the AICPA's standards of tax practice and delineate members' responsibilities to taxpayers, the public, the government, and the profession. The Statements are intended to be part of an ongoing process that may require changes to and interpretations of current SSTs in recognition of the accelerating rate of change in tax laws and the continued importance of tax practice to members.



## *QUALITY CONTROL MANUAL*

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### **ADVOCACY AND INTEGRITY**

The Firm has established policies and procedures to provide reasonable assurance that personnel at all organizational levels pursue with professional integrity the Firm's role as a client advocate in its tax practice. As advocates, members of the Firm seek to advance the client's position as long as that position and the Firm's efforts are within standards set by the law and by appropriate regulatory and professional bodies.

All personnel at all organizational levels are required to adhere to the American Institute of Certified Public Accountants ("AICPA") Code of Professional Conduct and its rules, regulations, interpretations, including the Statements on Standards for Tax Services (see following link) and Standards for Consulting Services (see following link) and to rulings of the Internal Revenue Service ("IRS") and any other applicable regulatory agencies or must be able to document and justify appropriate departures (for example, a filing position contrary to an IRS Revenue Ruling).

The partner in charge ("PIC") of the tax department is responsible for resolving questions relating to the foregoing matters and is available to provide guidance when required.

The PIC communicates with legal counsel, the AICPA, the State Society of CPAs, or other authorities for assistance in resolving any of the matters that have not been satisfactorily resolved within the Firm.

Memoranda documenting the resolution of these questions are prepared and retained by the PIC and or internal counsel (or designee). The memo should indicate the personnel involved in the matter.

In tax practice we will understand and be guided by:

- The Code of Professional Conduct of the AICPA (<http://www.aicpa.org/Research/Standards/CodeofConduct/Pages/default.aspx>) and applicable state societies as well as similar formulations of State Boards of Accountancy;
- IRS rules governing practice (Treasury Department Circular No. 230, as revised) and regulations governing tax return preparers and tax return positions (IRC §§ 6661, 6662 and 6694 and others as promulgated) <http://www.irs.ustreas.gov/pub/irs-pdf/pcir230.pdf> ;
- AICPA Statements on Standards for Tax Services (<http://www.aicpa.org/InterestAreas/Tax/Resources/StandardsEthics/StatementsonStandardsforTaxServices/Pages/default.aspx> (under "resources"))).
- AICPA Statements on Standards for Consulting Services



## QUALITY CONTROL MANUAL

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- <http://www.aicpa.org/InterestAreas/ForensicAndValuation/Resources/Standards/Pages/Statement%20on%20Standards%20for%20Consulting%20Services%20No.aspx>

Policies and procedures relating to advocacy and integrity are communicated to people at all organizational levels within the Firm. This includes the need to treat as confidential all information regarding client tax matters and to maintain an independent mental attitude in client relationships.

The Best Practices Manual (found on the Tax & Business Services Portal (“Tax Portal”)) is used to inform personnel of the Firm's policies and procedures and advise them that they are expected to be familiar with these policies and procedures.

Independence of mental attitude, coupled with advocacy of the client's interest, is emphasized during training sessions and in the supervision and review of tax engagements.

The library contains current professional, regulatory, and the Firm's own literature relating to tax matters, rulings and interpretations of the IRS, the AICPA, the State Society of CPAs, the State Board of Accountancy, and federal and state law. These rulings and interpretations currently include Treasury Department Circular 230, preparer penalties, and AICPA Statements on Standards for Tax Services and the AICPA Statements on Standards for Consulting Services.

The Firm considers all information relating to a client's tax matters to be confidential client information. The Profession's Code of Professional Conduct generally prohibits disclosure of confidential client information without the client's consent. In addition, civil and criminal penalties are imposed by the Internal Revenue Code (“IRC”) for disclosure of taxpayer information by return preparers.

The Firm will establish internal procedures for use and safeguarding of computers, computer software, files and emails to ensure privacy of client's information and include an evaluation of our third party systems used.

In accordance with the Firm's policy on CPA-Client Confidentiality Privilege under IRC section §7525, §7516 and state-specific confidentiality rules, no disclosure of client tax information to any person within the Firm is permitted except in the following circumstances. (See also, *AICPA Practice Guide on Confidentiality Privileges Relating to Taxpayer communication.*)

- Any communication to the engagement partner, a tax partner, or the managing partner.
- A communication to appropriate professional staff of information relevant to the audit, review, or compilation of financial statements for such client.
- A communication in the normal course of preparation of such client's tax return.



## *QUALITY CONTROL MANUAL*

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- Research of issues arising from the preparation of such client's tax return or tax planning rendered to such client.
- Any other situation expressly permitted by either the partner in charge of the tax dept. or by the managing partner pursuant to written policy or confidential memorandum.

Compliance with policies and procedures relating to advocacy and integrity is monitored.

The PIC is responsible for monitoring the Firm's policies and procedures in its tax practice.

The PIC is responsible for the resolution of exceptions to the Firm's policies and procedures relating to tax practice.



## *QUALITY CONTROL MANUAL*

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### **PROPOSALS, ACCEPTANCE AND CONTINUANCE OF CLIENTS**

#### **Proposals**

Proposals are first and foremost a marketing tool. As such, they should be prepared and presented in a manner calculated to win the Firm profitable business. However, they should be drafted to avoid exposing the Firm to undue risks. Proposals should therefore not promise a type of service that the Firm will not be able to deliver and should not include any language that could be construed as raising the level of care or liability applicable to the engagement. Also, proposals should not create a subjective standard of satisfaction that could later allow a client to contest a bill on the ground of not being satisfied with our services.

#### **Client Acceptance**

To minimize its exposure to risk and maximize its long-run profitability, the Firm has established policies and procedures for deciding whether to accept or continue a tax client. The Firm's image in its practice area is heavily affected by the public perception of its clients. Thus, prudence suggests that the Firm be selective in determining its professional relationships.

The engagement partner will ensure that the client understands and accepts the scope of the Firm's services, the Firm's responsibility for tax advice and returns, and the financial aspects of the client's relationship with the Firm.

The Firm has established procedures for evaluating and accepting prospective clients.

- During the proposal process and prior to submitting an engagement letter to a prospective client, a Conflict Check email may be sent to all Firm-wide employees to ensure there are no conflicts.
- The Office Tax PIC and/or the tax partners should be consulted before the Firm accepts a new client if substantial tax work will be required or if there is any doubt that the Firm possesses the tax expertise to complete the job adequately.
- Prior year tax returns are obtained and reviewed. (At least three prior year returns should be evaluated in most cases.)
- A review is made to ensure that acceptance of the client would not violate the requirements of the profession and of the Firm.
- The engagement partner assembles the aforementioned information and, evaluates all matters described in the previous paragraphs.
- Any engagement with an anticipated fee in excess of \$5,000, or where there is a tax research project that requires a written or verbal opinion, will require the completion of Form PF01-901, Engagement Acceptance Form-Non Attest Services (Tax and Accounting Services).



## QUALITY CONTROL MANUAL

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Users can access all forms from Marcum's Document Management System ("DMS"). The Office Tax PIC will review the completed form and all attachments (e.g. return copies, signed engagement letter, etc.) in order to reach an agreement on client acceptance. Engagement letters **MUST NOT** be signed by the engagement partner until written approval has been obtained from the tax PIC.

Client acceptance for non-attest services is required for all non-attest service engagements that require engagement letters pursuant to Firm policy. Procedures for the client acceptance process for all Non-Attest Services:

- If our services include an attest engagement, the non-attest engagement services will be included as part of the attest engagement client acceptance process. Therefore, the tax engagement letter should accompany the attest engagement acceptance form and no additional approval is required.
- The tax engagement letter signed by the client and the retainer should be received prior to submission for client acceptance. Note: the engagement letter should not be countersigned by the engagement partner until the engagement has been accepted.

An Engagement Acceptance Package, including the applicable Engagement Acceptance Form, along with all the required attachments should be completed and signed-off by the Engagement Partner.

The Engagement Acceptance Package should be scanned with a filename of "Acceptance Package – XXX Company" and copied into the "Tax Client Acceptance" folder on the network. The "The Client Acceptance" folder can be accessed through an icon on your desktop called "Tax Client Acceptance" S:\business\Tax\_Services\Clients\_Acceptance\_Forms. There are subfolders for each region. It is important to use the subfolder of the network location you work from; otherwise it may not be readable by the Client Acceptance Committee (the "Committee").

After the above steps are completed, an e-mail should be sent to the Outlook Distribution Group (BU-Tax Services Client Acceptance Committee) informing the Committee that the package is available for review.

The email should be received by the Committee no later than 2:00 pm Eastern Time, each Monday afternoon in order to be reviewed by the Committee at its regular weekly acceptance meeting, which will be held at 4:30 p.m. Eastern Time, each Wednesday. Days and times may be modified during holidays. The Engagement Partner and Manager should be available by phone for any questions that may arise. Please let the Committee know the best phone number to use at that time. Exceptions to this timeframe will be honored at the discretion of the



## QUALITY CONTROL MANUAL

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Committee, but are expected to be rare. The guidelines for the required Committee signatures are as follows:

- Compliance and most consulting engagements require one member of the Committee to sign-off on the acceptance package.
- Tax opinions, letter rulings, 9100 Relief, and tax fees over \$100,000 require two members of the Committee to sign-off.
- If there are differences of opinion between members of the Committee, the Managing Partner will be consulted for a final decision.

The Engagement Partner will be notified by a member of the Committee whether the client has been accepted and the amount of the credit limit. The Engagement Acceptance Forms and the attachments should be saved in the permanent file binder.

### **Engagement Letters**

Engagement letters are used to document service arrangements for tax clients. The Firm has formal engagement letter templates located in DMS.

Print the appropriate engagement letter template from DMS and revise it to meet your client's specific needs. Then submit to Word Processing for typing. Prior year engagement letters may be used for reference and wording. Attachment A should not be modified.

All engagement letters must be processed through the Word Processing department. When submitting work to Word Processing, please provide them with the applicable client and engagement codes. These codes are essential for billing purposes. Therefore, if the applicable codes are not submitted, the work will not be processed.

You have two options for processing and engagement letter:

- You can type your engagement letters prior to submission to Word Processing. You **MUST** use the most current template from DMS, and you **MUST** use the "Track Changes" feature when typing the document (*In Microsoft Office, Click on the Review Toolbar, and then click "Track Changes".*) E-mail the draft engagement letter to your respective word processing department (for all offices please use the respective email distribution group or public folder (Word Processing (Melville), etc.). Word Processing will first electronically compare your draft to the current template on DMS and then format the document.
- You also have the option to print the most current template from DMS and handwrite the changes and edits. Afterwards, deliver the document to the Word Processing department for typing.



## QUALITY CONTROL MANUAL

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Any future edits must be performed by Word Processing prior to placement on letterhead.

The Firm encourages you to email the engagement letters to clients, where possible. To do so, request that the Word Processing department send you the engagement letter on 'electronic letterhead'. This will help save costs, make it easier to track when the letters were sent and, if necessary, and quickly resend the letter to the client without having to reprocess it through Word Processing.

All clients are informed that they are required to provide adequately substantiated information.

The Firm will provide written notice of the Firm's privacy policy to all clients in conformance with the Federal Trade Commission's rule as well as the Firm's policy on CPA-client confidentiality privilege under IRC Section §7525 and state-specific confidentiality rules.

### **Client Continuance**

Tax clients are reviewed and evaluated at the end of specific periods or upon the occurrence of specified events to determine whether the relationship should be continued, modified, or terminated.

Reevaluations are made of existing clients on a regular basis or whenever there are new conditions that would have caused the Firm to reject the client had such conditions existed at the time of acceptance.

The following are some reasons that may justify terminating a professional tax relationship:

- It becomes clear that the client has failed to provide adequately substantiated information.
- A dispute with a client over taking a tax position inconsistent with the Statements on Standards for Tax Services or the Firm's policies.
- The engagement involves tax matters that the Firm is not competent to handle.
- The timing of the engagement makes unreasonable demands on the Firm's personnel
- Insurmountable personality conflicts exist.
- The return on the engagement is too low for the effort expended and risk taken (e.g. realization below 80%, or 60% in initial year).
- The client is chronically slow to pay.



## *QUALITY CONTROL MANUAL*

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If a client meets the criteria for a review, the engagement partner will complete Form # PF01-905. Additional information will be requested as needed upon providing a list of clients that are subject to retention review.

The PIC is responsible for evaluating the information obtained, making continuance recommendations, and administering the Firm's procedures for continuance of clients. If the PIC recommends discontinuance, the managing partner may participate in the continuance decision.

The PIC should be consulted when significant tax engagements are being considered for termination.

The managing partner performs an annual review of compliance with the Firm's policies and procedures for continuance of clients.

See Sections in the Quality Control Manual for Proposals, Acceptance and Continuance of Clients Procedures on the following topics:

- A. [Retaining Tax Files and Tax Return](#)



*QUALITY CONTROL MANUAL*

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**RETAINING TAX FILES AND TAX RETURNS**



## *QUALITY CONTROL MANUAL*

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### **PERFORMANCE OF SERVICES QUALIFIED AND AUTHORIZED TO PROVIDE**

The tax practice group is highly qualified to assist in all areas of tax services. However, it is not qualified to provide services outside the area of taxation. Our clients will be best served and most satisfied if we advise them to obtain those services from other practice groups within the Firm or from outside service providers, as appropriate.

#### **Scope of Tax Practice:**

##### **Tax Services Provided by the Firm**

Marcum LLP's tax practice group will undertake engagements in all phases of federal, state and local income taxation; federal and state estate, inheritance and gift taxation; excise taxes; and other taxes, such as sales and property. This includes planning, research, preparation of tax returns, handling examinations of tax returns and representation of taxpayers at administrative proceedings before the IRS and similar state and local agencies. We will assist clients in determining their state tax nexus or contacts for purposes of state and local income, franchise, sales and other taxes. We will engage in all forms of estate and family tax planning, including assistance with investment planning and appraisals. We will perform international tax services.

##### **Relationships with Other Professionals**

Working together with other professionals can offer excellent opportunities to serve our clients. Furthermore, the opinion of the professional community is an important element of the Firm's overall reputation. In all matters involving cooperation with other professionals, we should establish good working relations with our counterparts and attempt to foster a cooperative rather than a competitive spirit.

##### **Relationship of Tax Practice to Legal Practice**

In many cases, the practice of tax accounting and law overlap. State law prohibits the practice of law by persons who are not licensed and authorized to do so. It is the policy of this Firm that even Firm members who are licensed to practice law shall not practice law on behalf of the Firm. Since it is not possible to develop precise rules governing every potential situation, the following general guidelines should be observed:

- **Preparation of Legal Documents**

We will not draft legal documents, including but not limited to wills, trusts, agreements for purchases or sale, contracts, articles of incorporation, minutes, partnership agreements, bonds, mortgages, prospectuses, and pension and profit sharing plans.

- **Interpretation of Non Tax Laws**

Except as specifically approved by the office tax PIC, we will not interpret any laws for clients except in connection with the performance of tax services.



## QUALITY CONTROL MANUAL

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- Cooperation with Counsel in Tax Fraud Matters  
We should advise clients, or prospective clients, to engage an attorney immediately if an issue of civil or criminal tax fraud may be involved.
  
- Tax Controversies
  - In non-fraud tax controversies, we may represent the client before the taxing agency and in administrative hearings until it appears likely that the issues will be litigated. If litigation becomes likely, the client's tax attorney should be consulted and should review any protests, or other communications regarding the tax controversy, before they are submitted. The attorney should advise the client about the appropriate forum for all tax litigation.
  
  - We will prepare Tax Court petitions that must be prepared before the administrative appeal is complete (that is, when the client receives a 90-day letter) and the petition is prepared for the principal purpose of facilitating settlement of the controversy with the IRS rather than for litigating the issues involved. In all other situations, we will coordinate our activities with the client's attorney. In such cases where it is necessary for us to prepare a Tax Court petition, it must be reviewed prior to release by a member of the Tax Controversy Group. In other cases in which a Tax Court petition must be prepared in order to prevent the applicable period for filing from expiring, we may prepare the Tax Court petition, but only after informing the client that it must retain an attorney and obtaining a representation that the client will do so.
  
- We will review client's legal documents prepared by attorneys. Our reviews will generally be limited to evaluating the documents' tax and accounting consequences, including determining if they conform with our understanding of the intent of the parties, and determining whether they create tax costs or risks. Ordinarily, we should discuss any recommendations for language revisions directly with the attorney. Any comments concerning non-tax or accounting changes should be limited to clearly appropriate circumstances and should not imply we are attempting to practice law or usurp the attorney's area of competence.
  
- If an attorney requests our suggestions for appropriate language to use in specific documents, we may provide it from available tax services (such as BNA, CCH or RIA), documents prepared by other attorneys or other forms available to us. Language should be supplied only on the attorney's specific request and directly to the attorney. It must be limited to specific clauses and directed at specific items. It must be provided only for the attorney's review and evaluation, making clear that whether to use the language depends on the attorney's judgment.
  
- The following are guidelines with respect to specific types of legal matters. The list is not exhaustive, and we must avoid unauthorized practice of law in all areas.
  - We should work closely with legal counsel in advising the clients about estate planning. Responsibility for drafting documents should rest with the attorney.



## QUALITY CONTROL MANUAL

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- We should work closely with legal counsel in advising clients about the tax implications of partnership agreements, LLC Operating Agreements, S Corporation shareholder agreements and Buy/Sell agreements. Responsibility for drafting documents should rest with the attorney.
- We should work closely with legal counsel in advising on employee benefits matters. We should refer preparation of summary plan descriptions and Department of Labor reports, except for Forms 5500 series, to the client's attorney. If the client expressly requests we prepare these documents, the client should be advised in writing to seek the counsel's review of them before filing.
- Determining if an entity is "doing business" within a state is primarily a legal questions. We will advise clients whether they are liable for filing tax returns because they have tax "nexus" or minimum contacts. We should advise them to seek the advice of legal counsel with respect to their contacts for purposes of qualifying to do business or non-tax filing requirements.
- Legal issues concerning employer-employee and independent-contractor relationships should be referred to legal counsel. We may perform analyses based on issued IRS guidelines and checklists to help clients determine if they are responsible for payroll taxes, but we should not indicate we are opining on the existence of, or the qualities of, the underlying legal relationship in communicating our findings.
- Other areas which represent the practice of law and which should be referred to the client's attorney for resolution include the following:
  - Wage and Hour Law (Fair Labor Standards Act) problems;
  - Worker's compensation;
  - Compliance with laws relating to participation in foreign boycotts (except for determination of the tax results of IRC § 999 penalties);
  - Illegal payments, bribes or kickbacks; and
  - Legality of political contributions.



## *QUALITY CONTROL MANUAL*

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### **Relationship of Civil Tax Practice to Potentially Criminal Tax Practice**

#### *Tax Fraud*

We will treat a matter as involving or having the potential to involve criminal tax fraud when either an IRS Special Agent (or the state or local equivalent) has been assigned to the matter or when we believe that it is probable that a criminal tax fraud issue will be raised.

We will treat a matter as involving civil tax fraud when we believe it is probable that a civil tax fraud penalty will be seriously asserted. We will not treat a matter as involving civil tax fraud when a civil tax fraud penalty is threatened or asserted but we view the assertion as representing a negotiating or investigatory posture or otherwise having little probability of success.

In a case involving alleged criminal tax fraud, we shall perform services only on behalf of the client's legal counsel for the purpose of assisting such counsel. We must obtain an engagement letter from the client's attorney stating that we are performing services for the attorney and not the client. The purpose of this policy is to protect the interests of the Firm and the taxpayer and to allow the attorney-client privilege to apply to the maximum possible extent.

If it appears that the Firm may be accused of participating in tax fraud or be used as a scapegoat by the client or the client's attorney, we must withdraw or refuse the engagement and contact the Firm's legal counsel.

#### *Failure to File Situations*

Failure to file tax returns may involve the probability of a criminal investigation or prosecution. In such cases, we must advise the client to seek legal representation and provide services only through the client's attorney. If no criminal proceeding appears probable, we may represent the client in attempting to reenter the tax system, subject to compliance with the Firm's client engagement and retention procedures.

### **Relationship of Tax Practice to Investment Advice**

For prudential and ethical reasons, the Firm must not engage in prohibited activities relating to investments. However, permitted activities, as set forth below, can be of considerable value and assistance to our clients as well as being profitable to the Firm.

#### *Permissible Tax Activities Relating to Investments*

We may give advice about the tax consequences connected with any transaction contemplated by a client, including proposed investment transactions.

We may provide limited assistance to clients who request our help to find tax sheltered investments. Such assistance should be limited to presenting the client with tax strategies provided by the Firm, introducing the client to outside providers of such investments (as discussed below) and assisting the client in evaluating the potential tax consequences of investments under consideration. The client must be informed that we do not act as investment advisors and that we cannot recommend particular investments to them.



## QUALITY CONTROL MANUAL

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We can provide the client with the names and addresses of promoters or investment advisors who may have offerings or services that meet the client's needs, describe briefly a particular offering by identifying the industry and size of offering units, and introduce the parties to one another. The interested investor should obtain any prospectuses directly from the offer or and not from us.

### Permissible Activities that Must be Performed in Conjunction with Other Business Lines Within the Firm and With Due Caution

In conjunction with the assurance group, we may compile or examine prospective financial statements for clients who use them to sell syndicated interests in investments.

In conjunction with the assurance group, we may assist clients to interpret and understand information included in offering memoranda and prospectuses, particularly in regard to accounting matters. It is appropriate to highlight disclosures and other relevant information.

In conjunction with the audit group, we may perform due diligence reviews of prospective acquisitions or business relationships, review the business merits of such transactions, assist with projections, help to obtain financing and offer general business insight with respect to such transactions and other investments. We may give tax advice on all aspects of those transactions and investments.

We may advise a client who asks for our advice about an investment offered to him or her by another client, but must exercise even more than the normal level of caution. Any involvement of this nature should be discussed, at the very outset, between the individuals responsible for both clients' engagements. We must disclose the dual representation to both clients.

### Inappropriate or Prohibited Activities

We should avoid assisting our clients in marketing their investment products to anyone, except that we may make introductions to potential investors, provided that we make clear (ordinarily in writing) that such introductions do not constitute endorsements of the investments being marketed.

We should avoid distributing literature about or recommending, specific investments because this can be construed as "promotion." This can put us in the position of a seller of securities or an agent of the seller and may expose the individual and the Firm to liability under state and federal securities laws.

We shall not accept fees for recommending particular investments. Violation of this policy may result in our incurring liability to investors or being found to be "unregistered investment advisors" subject to legal sanctions. We may accept fees for making introductions to potential investors provided that such introductions are made in compliance with section XII(4)(c)(i).



## *QUALITY CONTROL MANUAL*

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We shall not act as the clients' agent for negotiating with, or purchasing from, the promoter of an investment.

We must not sign representations that state or imply that we accept the responsibility for explaining the investment implications of an investment offering to a prospective purchaser, or hold ourselves out to the offer or to others as a prospective purchaser's agent or representative for such purpose.

### **Relationship of Tax Practice to Valuation Services**

Tax personnel shall refer all requests for valuation services to appropriate members of Marcum LLP's Business Valuation Services Group. Any such services shall be performed by or under the supervision of appropriate members of the Business Valuation Services Group. Tax personnel shall conform to the policies and standards of Marcum LLP's Business Valuation Services Group when accepting, performing and reviewing engagements involving valuation services.

### **Relationship of Tax Practice to General Business Advice**

Our clients often look to us for general business advice. It is appropriate to make general comments on business issues, mention "pros and cons" of various possible courses of action, and otherwise assist clients in analyzing business questions. In giving any such advice, we should make clear that we are not responsible for all aspects of a business situation, but are merely mentioning certain aspects. We should not recommend what final decision a client should make with respect to any business course of action.

### **Relationship of Tax Practice to Assurance Practice**

For certain attest functions, tax group review of tax accruals is mandatory and may be done in the field. Tax group review of tax accruals for compilations is strongly advised.

All audits will require tax department sign-off. Reviews and compilations will NOT require tax department sign-off

ASC 740 (FIN 48) for non-pass-through entities will require tax department sign-off. Pass-through entities will NOT require tax department sign-off

Where tax department sign-off is required, the assurance engagement partner and the tax partner can agree not to have a detailed review by the tax department if it is determined that:

- The client does not have high risk related to the tax provision (large NOL); and
- The Assurance engagement team has the ability to evaluate the provision; and
- The Assurance and Tax departments agree that a detail review is not required; and
- The Review department agrees with the sign-off of Assurance only.



## *QUALITY CONTROL MANUAL*

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Only authorized Tax department personal should sign off for the department. This would be mostly tax partners that practice in the Corporate or Business Enterprise Groups, or someone authorized by the Tax PIC.

The Tax business line should rely heavily on the business line for active assistance in marketing tax services and strategies and is entitled to expect full cooperation from the Firm's Assurance professionals. The Tax and Assurance business lines should share knowledge gained in meetings with clients and should provide each other with copies of all significant correspondence relating to common clients.

In all other matters, the Tax group should cooperate with the Assurance group to the maximum extent possible.



## *QUALITY CONTROL MANUAL*

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### **PLANNING FOR ENGAGEMENTS**



## *QUALITY CONTROL MANUAL*

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### **ASSIGNING PERSONNEL TO ENGAGEMENTS**

The Firm has established policies and procedures for assigning people to engagements, as outlined in the Best Practices Manual, to provide reasonable assurance that work will be performed by persons having the degree of technical training and proficiency required under the circumstances. In making assignments, the nature and extent of the supervision to be provided is taken into account. In general, the more able and experienced the personnel assigned to a particular project or engagement, the less the need for direct supervision.

The Firm's approach to assigning people includes planning for overall needs of the Firm, its office and tax work needs, and the measures needed to achieve a balance between engagement requirements, individual qualifications, individual development, and utilization.

Further discussions regarding hour requirements, availability and timing are detailed within the Best Practices manual.



## *QUALITY CONTROL MANUAL*

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### **CONSULTATION**

The Firm has established policies and procedures for consultation to provide reasonable assurance that it is in compliance with Circular 230 and the Statements on Standards for Tax Services and that staff will seek assistance, to the extent required, from persons within and without the Firm having appropriate levels of knowledge, competence, judgment, and authority. The nature of arrangements for consultation will depend on a number of factors, including the size of the Firm, the availability of the library and other resources, and the levels of knowledge, competence, and judgment possessed by the people performing the work.

Areas and specialized situations in which consultation is required are identified, and people are encouraged to consult authorities in other situations that may be complex or unusual.

Specific individuals are designated within and without the Firm as consultants to serve as authoritative sources, and their authority in consultative situations is defined. The list of specific individuals with expertise in various areas – known as the Subject Matter Expert (SME) Database – is maintained in the Tax Portal.

Procedures are provided for resolving differences of opinion between the people working on an engagement and the consultants as follows:

- Differences of opinion between tax staff members are brought to the attention of the engagement partner.
- If the engagement partner and tax staff are able to reach an appropriate resolution, the matter is concluded.
- If the engagement partner is unable to develop an appropriate resolution, the tax line partner is consulted. The opinion of the tax line partner shall prevail.
- If a resolution is unable to be reached, then the following individuals will be consulted in order:
  - Office Tax PIC or Office PIC
  - Firm Wide Tax PIC or Managing Partner
- Any professional personnel, if not in agreement with the decision, may document their disagreement and can disassociate themselves from the resolution of the matter.

In situations in which the Firm's policy requires the use of consultants, a summary of the consultant's conclusions and rationale is to be prepared by the person seeking the consultation and is filed in the working papers.



## *BEST PRACTICES MANUAL*

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### Section B - General Compliance Procedures

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