

§ 10.50

1.6662-4(d)(3)(iii), or any successor provision, of the substantial understatement penalty regulations may be taken into account for purposes of this analysis. The possibility that a position will not be challenged by the Service (e.g., because the taxpayer's return may not be audited or because the issue may not be raised on audit) may not be taken into account.

(ii) *Frivolous*. A position is frivolous if it is patently improper.

(b) *Standard of discipline*. As provided in § 10.52, only violations of this section that are willful, reckless, or a result of gross incompetence will subject a practitioner to suspension or disbarment from practice before the Service.

[59 FR 31527, June 20, 1994]

Subpart C—Rules Applicable to Disciplinary Proceedings

§ 10.50 Authority to disbar or suspend.

Pursuant to 31 U.S.C. 330(b), the Secretary of the Treasury after notice and an opportunity for a proceeding, may suspend or disbar any practitioner from practice before the Internal Revenue Service. The Secretary may take such action against any practitioner who is shown to be incompetent or disreputable, who refuses to comply with any regulation in this part, or who, with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client.

[59 FR 31528, June 20, 1994]

§ 10.51 Disreputable conduct.

Disreputable conduct for which an attorney, certified public accountant, enrolled agent, or enrolled actuary may be disbarred or suspended from practice before the Internal Revenue Service includes, but is not limited to:

(a) Conviction of any criminal offense under the revenue laws of the United States, or of any offense involving dishonesty, or breach of trust.

(b) Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any officer or employee thereof, or to any tribunal authorized to pass upon Federal tax matters, in connection with any matter pending or

31 CFR Subtitle A (7-1-02 Edition)

likely to be pending before them, knowing such information to be false or misleading. Facts or other matters contained in testimony, Federal tax returns, financial statements, applications for enrollment, affidavits, declarations, or any other document or statement, written or oral, are included in the term "information."

(c) Solicitation of employment as prohibited under § 10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the Internal Revenue Service or officer or employee thereof.

(d) Willfully failing to make Federal tax return in violation of the revenue laws of the United States, or evading, attempting to evade, or participating in any way in evading or attempting to evade any Federal tax or payment thereof, knowingly counseling or suggesting to a client or prospective client an illegal plan to evade Federal taxes or payment thereof, or concealing assets of himself or another to evade Federal taxes or payment thereof.

(e) Misappropriation of, or failure properly and promptly to remit funds received from a client for the purpose of payment of taxes or other obligations due the United States.

(f) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Internal Revenue Service by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor or thing of value.

(g) Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any State, possession, territory, Commonwealth, the District of Columbia, any Federal court of record or any Federal agency, body or board.

(h) Knowingly aiding and abetting another person to practice before the