

(2) Any appraisal made by a disqualified appraiser after the effective date of disqualification will not have any probative effect in any administrative proceeding before the Department of the Treasury or the Internal Revenue Service. An appraisal otherwise barred from admission into evidence pursuant to this section may be admitted into evidence solely for the purpose of determining the taxpayer's reliance in good faith on such appraisal.

**§ 10.51 Incompetence and disreputable conduct.**

Incompetence and disreputable conduct for which a practitioner may be censured, suspended or disbarred 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;

(b) Conviction of any criminal offense involving dishonesty or breach of trust;

(c) Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice before the Internal Revenue Service;

(d) 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 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*.

(e) 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.

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

(g) 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.

(h) 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.

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

(j) Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

(k) Contemptuous conduct in connection with practice before the Internal Revenue Service, including the use of abusive language, making false accusations and statements, knowing them to be false, or circulating or publishing malicious or libelous matter.

(l) Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the Federal tax laws. False opinions described in this paragraph (l) include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under

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existing law, from counseling or assisting in conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the tax opinion or offering material are false or misleading. For purposes of this paragraph (l), reckless conduct is a highly unreasonable omission or misrepresentation involving an extreme departure from the standards of ordinary care that a practitioner should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a practitioner acted knowingly, recklessly, or through gross incompetence. Gross incompetence includes conduct that reflects gross indifference, preparation which is grossly inadequate under the circumstances, and a consistent failure to perform obligations to the client.

### § 10.52 Violation of regulations.

(a) *Prohibited conduct.* A practitioner may be censured, suspended or disbarred from practice before the Internal Revenue Service for any of the following:

(1) Willfully violating any of the regulations (other than §10.33) contained in this part; or

(2) Recklessly or through gross incompetence (within the meaning of §10.51(l)) violating §§ 10.34, 10.35, 10.36 or 10.37.

(b) *Effective date.* This section applies after June 20, 2005.

[T.D. 9011, 67 FR 48771, July 26, 2002, as amended by T.D. 9165, 69 FR 75845, Dec. 20, 2004]

## Subpart D—Rules Applicable to Disciplinary Proceedings

SOURCE: 67 FR 48774, July 26, 2002, unless otherwise noted.

### § 10.60 Institution of proceeding.

(a) Whenever the Director of Practice determines that a practitioner violated any provision of the laws governing practice before the Internal Revenue Service or the regulations in this part, the Director of Practice may reprimand the practitioner or, in accord-

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ance with §10.62, institute a proceeding for censure, suspension, or disbarment of the practitioner. A proceeding for censure, suspension, or disbarment of a practitioner is instituted by the filing of a complaint, the contents of which are more fully described in §10.62.

(b) Whenever the Director of Practice is advised or becomes aware that a penalty has been assessed against an appraiser under section 6701(a) of the Internal Revenue Code, the Director of Practice may reprimand the appraiser or, in accordance with §10.62, institute a proceeding for disqualification of the appraiser. A proceeding for disqualification of an appraiser is instituted by the filing of a complaint, the contents of which are more fully described in §10.62.

(c) Except as provided in §10.82, a proceeding will not be instituted under this section unless the proposed respondent previously has been advised in writing of the law, facts and conduct warranting such action and has been accorded an opportunity to dispute facts, assert additional facts, and make arguments (including an explanation or description of mitigating circumstances).

### § 10.61 Conferences.

(a) *In general.* The Director of Practice may confer with a practitioner or an appraiser concerning allegations of misconduct irrespective of whether a proceeding for censure, suspension, disbarment, or disqualification has been instituted against the practitioner or appraiser. If the conference results in a stipulation in connection with an ongoing proceeding in which the practitioner or appraiser is the respondent, the stipulation may be entered in the record by either party to the proceeding.

(b) *Resignation or voluntary censure, suspension or disbarment.* In lieu of a proceeding being instituted or continued under paragraph (a) of §10.60, a practitioner may offer his or her consent to the issuance of a censure, suspension or disbarment, or, if the practitioner is an enrolled agent, may offer to resign. The Director of Practice may, in his or her discretion, accept or decline the offered censure, suspension, disbarment, or offer of resignation by