

# Establishing Client Relationship with Engagement Agreements

Presented by  
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# Learning Objectives

- Recognize the importance of using engagement agreements
- Evaluate the proper use of engagement agreements
- Select recommended clauses that should be included in an engagement agreement
- Create engagement agreements
- Determine ways to engage and disengage clients in a professional manner

# In my dreams...



# Waking up to reality...



# First Step

- BEFORE we make sense of the mess
- BEFORE we even accept that stuffed shoebox
- BEFORE we start work
- We need MORE paperwork!



# Best Practices

A commitment to using a technique or methodology that, through experience & research, has proven to ensure success

I will share:

- My experiences
- Research
- Opinions of fellow practitioners
- Accumulation of shared expertise



# Disclaimer

- NO legal advice
- NO guarantees or warranties
- NO assurance of compliance with any federal, state or local law or professional standard

Sample wording is provided for educational purposes only:

- A stepping stone
- A conversation starter
- **An encouragement that you seek legal counsel to help you draft compliant documents useful to your practice**





# Polling Question # 1

Do you use an engagement agreement?

- Yes, always
- Sometimes
- No, but I know I should

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# What we'll discuss...

- The need for formalized agreements
- Basic contractual elements
- Specific clauses
- A few caveats
- The Engagement Agreement is just a start

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# Why we need an Agreement

- To outline the scope of the engagement
  - Define our obligations to the client
  - Define the client's responsibilities
  - Ensure mutual cooperation & reciprocal trust
- Legal reasons
  - Provide protection
  - Mitigate liability exposure from negligence & malpractice
  - Ensure compliance with regulatory & professional standards



# Legal Battles

- In the legal world, you can rely on the Agreement to:
  - Enforce your rights
  - Collect your fees
  - Defend yourself in adversarial situations
- But legal fights are:
  - Time-consuming
  - Costly
  - Unsatisfactory outcome

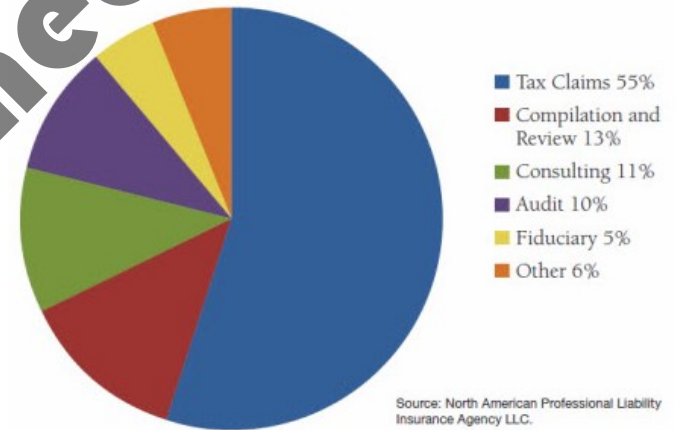


# Insurance

- Even a “perfect” agreement does not replace E & O coverage

- Policies typically cover:

- Negligent or inaccurate advice
- Erroneous document preparation
- Mistakes & omissions



- Coverage is activated when legal action is threatened

Risk of (covered) loss transferred from practitioner to insurance carrier

# Professional Bond

- Does *not* indemnify practitioner against loss
- Surety company guarantees that it will pay damages up to (minimal) threshold
- Then...  
Surety company will pursue practitioner for reimbursement

Risk of (limited) loss transferred from  
state or clients to surety company

# Confrontation Avoidance

- Stay educated & informed
- Provide expert service
- Prepare a product that can survive scrutiny
- Keep client informed
- Screen and “train” the client
- Fire the questionable client
- Maintain personal & professional integrity at all costs



# Then why use an Agreement?

ONE word...

**Professionalism**





## Polling Question # 2

Please select the correct statement:

- Insurance can be used to transfer risk from the tax pro to an insurance carrier.
- A professional bond can be used to transfer risk from the tax pro to a surety company.



# Basic Contract Provisions

- Tailor contract to the situation by outlining:
  - Service(s) to be provided
  - Period covered
  - Duration of engagement
- Avoid:
  - Boilerplate language
  - Evergreen contracts that exist into perpetuity
- Use separate contracts for each service or purpose:
  - Tax preparation services
  - Representation
  - Consulting



*(so is a bad tattoo)*

# SAMPLE: Duration & Purpose

## ENGAGEMENT AGREEMENT FOR TY 2018

### Duration of Engagement

Engagement will begin once Client has signed Agreement; however, in the event that Client does not return signed Agreement to EA but nonetheless verbally agrees (or otherwise indicates by such actions as submitting the tax organizer, providing tax data, or filing the prepared returns) that EA shall prepare returns on Client's behalf, all terms and conditions of this Agreement shall apply. Client's signature on federal and/or state e-file authorization form(s) shall be deemed acceptance by Client of all terms in Engagement Agreement. Engagement of EA's services will be deemed satisfied upon delivery of completed returns to Client who is solely responsible for filing all tax returns with the appropriate tax authorities. Additional services (e.g. tax planning, communications with tax authorities, preparing prior-year unfiled returns, etc.) may be provided under separate agreement between Client and EA.

# “UNCONSCIONABLE” CONTRACT?

- Bilateral agreement?
  - Technically, yes since promises are exchanged
  - But not the result of arms’ length negotiation between tax pro & client
- Adhesion Contract – must be accepted or rejected
  - Fine-print
  - Unintelligible legalese
  - Unfair for client pressed to sign

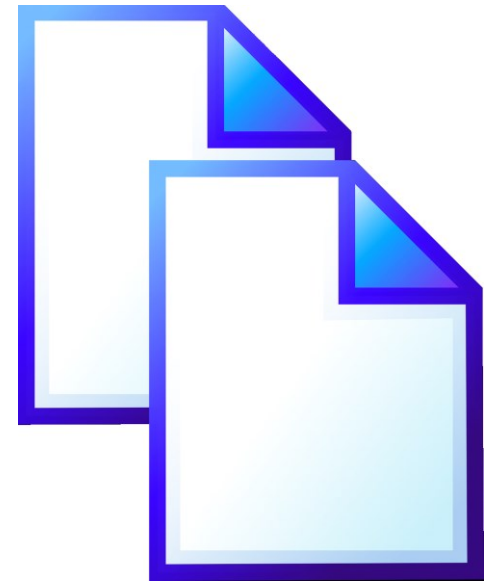


# Informed (?) Consent



# Make it fair

- Provide copy at year-start with annual letter
- Post copy to website
- Allow client to read in (out) of office
- Review each section verbally
- Provide duplicate copy to client



# Make it easy

- Distinctive headings
- Short paragraphs
- Plain English
- Avoid jargon
- Insert humor, where appropriate
- Make it readable





# Notwithstanding

- Postpositive Preposition

*...notwithstanding the evidence, the consensus is that the jury will not reach a verdict...*

- Adverb

*...she tells us she is an intellectual; notwithstanding, she faces the future as unprovided for as a beauty queen...*

- Subordinating Conjunction

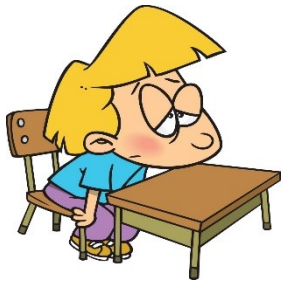
*...notwithstanding that the hall was packed with bullies, our champion played on steadily and patiently...*

# SAMPLE: Humor

## Patience

As much as I wish I could treat you as though you were my only client, (un)fortunately you are not. Please bear with me as this client did: “My life is quite complicated and I’ll need your help on several fronts. My employer is bankrupt so I’ll soon be out of work and without health insurance. Dad has dementia. Mom is moving into a senior facility. Then there’s the homicide investigation (a patient) and the pedophilia trial (a close friend). It’s all fascinating stuff, really, but... **all of it can wait.**”





## Polling Question # 3

While an engagement agreement is generally not the result of arms' length negotiations, it is nevertheless considered to be a bilateral contract because promises are exchanged between the signing parties.

- True
- False

# Specific Clauses



## Circular No. 230, §10.33 (a)(1)

*...best practices include... [c]ommunicating clearly with the client regarding the terms of the engagement... [and] have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.*



*(Currently using revision published June 12, 2014)*

# Mutual Responsibilities

- Professional relationship will survive & succeed only if both parties understand duties & obligations
- Quid pro quo



Gist of relationship:

In exchange for complete & valid data provided by client,  
tax pro will prepare a tax return on his behalf

# Client Responsibilities:

## Tax Data

### Supporting Data

By signing this Agreement, Client states that he has the necessary documents and records to support the deductions claimed on the tax return and will provide all requested information in a timely manner. While Client is not required to use the Personal Tax Organizer™, Client must provide all information requested and answer all questions asked on the Organizer in a clear and legible format.

Client is advised that the law imposes a penalty for substantial understatement of the tax liability and that the tax authorities regularly question whether any cash or bartering transactions have transpired. Close scrutiny of expenditures, including but not limited to travel and entertainment expenses, business use of automobile and cell phones, as well as charitable donations is common. EA is required to provide full disclosure to tax authorities should estimates or reconstructed data be entered on the return.

# Client Responsibilities:

## Timeliness

### Timeliness

Client agrees to deliver requisite tax data and supporting documentation in a timely manner and **will not hold EA responsible for delays due to Client's lack of cooperation** during the tax preparation process. A surcharge of 5% may be assessed if Client provides data to EA more than 10 days after EA's initial request. EA may terminate contract without further notice, if Client fails to provide requested data. **NOTE:** EA will give priority of service to clients who have timely provided data and otherwise cooperated with the tax preparation process.

The filing deadline for TY 2018 individual returns is April 15<sup>th</sup>, 2019. If EA has not received Client's personal income tax data in full by March 15<sup>th</sup>, 2019, an **extension request will be automatically e-filed** by EA unless Client has notified EA in a timely fashion that an extension is neither needed nor wanted. EA will not provide ongoing reminders of filing deadlines or requests for information. **NOTE:** Since an extension merely extends the time for filing (not payment), **penalties and interest for late payment may accrue** for which the Client will be wholly responsible.

# Client Responsibilities: Review

## Client Review

Client is wholly responsible for the accuracy of the return and will—after careful review—sign and deliver the completed return(s) to the proper taxing authorities or authorize EA to file electronically.

**NOTE:** The law provides for a penalty to be assessed for substantial understatement of the tax liability. Client is responsible for all penalties and interest.



# Polling Question # 4

Circular 230 requires:

- A. Communicating clearly with the client regarding the terms of the engagement.
- B. Having a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

- A only
- B only
- A and B
- Neither A nor B



# Practitioner Responsibilities:

## Apply the Law

### Mission

Returns will be prepared based on the information provided by Client. EA will not audit nor verify the data and may request additional material or clarification. EA will make every attempt to properly apply the law and legally minimize Client's tax liability. EA will exercise professional judgment and will, whenever possible and justifiable, attempt to resolve any issues involving the Code in favor of Client.

## Circular No. 230, §10.21

*A practitioner who... knows that the client has not complied with the revenue laws of the United States or has made an error in or omission... must advise the client promptly of the fact of such noncompliance... [and] advise the client of the consequences...*



# Practitioner Responsibilities:

## Practice Standards

### Practice Standards

EA may not sign a return as a paid preparer if EA determines that the return contains a position that does not have a realistic possibility of being sustained on its merits, unless the position is not frivolous and is adequately disclosed to the IRS as per IRC § 6662. EA must inform Client of penalties likely to apply regarding the position advised, prepared or reported and must advise Client of any opportunity to avoid such penalty by making adequate disclosure. EA may rely in good faith (without verification) upon all information furnished by Client; however, EA must make reasonable inquiries if the information appears to be incorrect, inconsistent or incomplete.



# Fine-tuning: Confidentiality

## Confidentiality

Client is hereby given notice that all communications throughout the tax preparation process with EA are confidential, but *not privileged* and may be disclosed if a summons is issued. The working papers for this engagement are the property of EA and constitute confidential information. Any requests for access to these materials will be discussed with Client before making them available to other parties. Limited privilege may be available during the representation process under IRC § 7525. Client may advise EA to assert this privilege in non-criminal tax matters involving the Internal Revenue Service or federal district courts. Client, however, should be aware that disclosure of information considered during the tax preparation process is not covered under privilege—only tax advice communications are covered. Client hereby agrees to reimburse EA for all costs, including legal fees, required to defend the privilege asserted. Client should immediately *engage legal counsel* if he has any concerns regarding possible criminal matters.

# Fine-tuning: Privilege



- Client enjoys only *limited* privilege with tax practitioner
  - Non-criminal matters only
  - Communications regarding tax shelters specifically excluded (IRC §7525)
- Attorney-client privilege extended to tax practitioner via Kovel Letter
  - Accountant hired by legal firm held in contempt of court when he refused to comply with grand jury subpoena
  - Overturned on appeal

Privilege is extended to tax practitioner if communications made for the purpose of obtaining legal advice from attorney



# Fine-tuning: Privacy

## Privacy

EA does not disclose nonpublic personal information about current or former clients to anyone unless instructed to do so in writing by Client [see separate Disclosure Authorization]. If a joint return is filed, EA may provide returns and copies of supporting documentation to either spouse without consent from or notification to the other spouse [see separate Spousal Conflict Waiver]. EA restricts access to nonpublic personal information to those professionals who may assist in the preparation process or provide tax advisory and bookkeeping services. EA has instituted all reasonable measures, including physical, electronic and procedural safeguards to protect Client's nonpublic personal information. Client assumes the risk of loss of confidentiality and/or tax documents during unencoded electronic transmission via the internet or mailing via USPS and third party delivery services.



# NON-DISCLOSURE agreement

- Added measure of security
- Ensure integrity of client information
- Prevent unauthorized disclosure
- To be signed by:
  - Employees
  - Consultants (e.g., IT guy and bookkeeper)
  - Practitioner's family members

## Exclusions

Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.



# Polling Question # 5

Tax practitioners may offer privilege to their clients under which circumstance?

- When communicating regarding tax shelters.
- When discussing criminal tax matters.
- When collaborating with the client's attorney pursuant to a Kovel Letter.



# Fine-tuning: Document Retention

It is impractical to safeguard personal information indefinitely

- All supporting documentation will be returned to client
- Work papers will be automatically destroyed after specified time – practitioners should check local statutes

## Document Retention

Client's final work product will be retained for five years; thereafter, all documents will be destroyed without further notice to Client. Client understands and agrees that in the event a file is destroyed, EA will no longer have any records and will not have any responsibility to reconstruct the file. Client will assume all costs of shipping and storage should Client notify EA in a *timely manner* that the file should be forwarded to Client prior to destruction. EA does not retain any original documents as they are returned to Client at the completion of the tax preparation process. It is the Client's responsibility to keep these materials for future use, including possible examination by the tax authorities.

## Circular No. 230, §10.28(b)

*[Client records] include all documents or written or electronic materials provided to the practitioner... that preexisted the retention of the practitioner by the client... [as well as] materials that were prepared by the client or a third party... at any time and provided to the practitioner...*



# Crucial Clauses:

## Getting Paid

- NO price quotes by phone or e-mail
- FREE introductory meeting
  - Client can evaluate pro's expertise and establish rapport
  - Pro can evaluate client's candor & gauge work to be done
- Use Engagement Agreement to:
  - Confirm quoted fee
  - Offer discounts
  - Outline payment terms



# Crucial Clauses:

## Payment Terms

### Payment Terms

When data is submitted to EA, Client will prepay one-half of the applicable tax preparation fee (*minimum prepayment shall be \$XXX in all cases*). The balance is due upon delivery – whether physical or virtual – of the completed return. A monthly penalty will be assessed on the unpaid balance based on an annual rate of X%. No additional services will be provided by EA until the account has been brought current. Prepaid deposits are non-refundable once the preparation process has begun. EA may take legal action to collect any outstanding fees and all costs incurred during the collection process will be added to Client's bill.

Check local usury laws.

# Crucial Clauses:

## Cost of Service

### Cost of Service

Fees for tax preparation will be based on the complexity of the return, the expertise required, and the time expended by EA and will be increased annually to remain commensurate with the requisite skill, knowledge, expertise, and continuing education required by regulatory authorities. Extraordinary expenses and additional services, including but not limited to tax file organization, data compilation, cost basis computations, research, replacement of lost returns, postage (delivery via UPS is charged a minimum \$XX fee), correspondence with the taxing authorities, bookkeeping, tax consultation and audit representation, will be billed on an hourly basis.

Client, if eligible, may enjoy one of the following XX% discounts: Student, Senior, Out-Patient, or Multi-Return. All discounts will be voided if Client has not paid EA's invoice in full within 10 days after initial billing.

Client may pay by cash or check or PayPal™. Client's returns will not be e-filed until EA's fees have been paid in full or alternate payment arrangements have been approved by EA. Client agrees to review all invoices upon receipt; absent any objection within 30 days, the invoice will be deemed correct, due and payable.

# Crucial Clauses:

## Dispute Resolution & Jurisdiction

### Dispute Resolution

Any dispute arising under this Agreement or relating to EA's services, including but not limited to disputes regarding fees, the scope of the engagement or professional malpractice, will be first submitted for non-binding mediation or alternative dispute resolution before litigation is filed. Litigation, if undertaken, shall be conducted in the county of XXX according to XX state law.



Additional clauses (if allowed under local law):

- Limit time for client to file a claim for breach of contract
- Limit practitioner's liability (e.g., damages cannot exceed fees received)





# Legal Caveats:

## Expertise & Nexus

- Do not offer advice beyond area(s) of expertise
  - Recognize that it is difficult to keep abreast of changes
  - Admit limitations to client
  - Establish referral network of professionals with specialized knowledge
- Alert client that:
  - He may have additional, less-than-obvious filing obligations
  - Practitioner is not responsible for position(s) taken on prior-year return(s) prepared by predecessor(s)

### Nexus

EA's services are not intended to determine whether Client has filing requirements in taxing jurisdictions other than the one(s) Client has mentioned to EA.

# Legal Caveats:

## Unauthorized Practice of Law



- It is illegal to practice law without a license
- It is easy to “cross the line”
  - Practitioner advises sole proprietor to register fictitious business name
  - Practitioner advises partners to form LLC
  - Practitioner advises client to move to state with more favorable Circuit Court ruling
  - Practitioner helps client draft family-loan document
  - Practitioner researched case law to represent client in audit
- We’ve all been there; done that

Not clearly defined, so be careful!

# Do's & Don'ts



- Use *updated* agreement
  - Use *legible* font type & size
  - Limit Agreement to 2 pages (if possible)
- Have client sign Agreement *before* starting work
- *All* parties should sign (both spouses if married)
- Signatures should be obtained *at least annually*
- Do not guarantee outcome or results
- Establish clearly defined office policies & procedures



# SAMPLE: Engagement agreement

## ENGAGEMENT AGREEMENT FOR TAXS 2019

Acceptance by Client constitutes mutual understanding and agreement with all terms & engagement of Monica Haven CPA.  
(Which will not begin without signed Agreement on file)

Client Name(s): \_\_\_\_\_ CA Certificate No. \_\_\_\_\_

### Client Responsibilities

**Supports Data**  
By signing this Agreement, Client states that Client has the necessary documents and records to support the deductions claimed on the tax return and will provide all requested information in a timely manner. While Client is not required to use the Personal Tax Organizer™, Client must provide all information requested and answer all questions asked on the Organizer in a clear and legible format. Client is advised that the law imposes a penalty for substantial understatement of tax liability and that the tax authorities regularly question whether any cash or bartering transactions have transpired. Close scrutiny of expenditures, including but not limited to travel and entertainment expenses, business use of automobile and cell phones, as well as charitable donations a donation. CA is required to provide full disclosure to tax authorities should estimates or reconstructed data be ordered on the return.

**Foreign (or Cryptocurrency) Activities**  
Client is hereby advised that Client is responsible for reporting all foreign activities. By signing this Agreement, Client acknowledges Client's obligation to inform FA if Client has income from foreign sources, has significant foreign assets, owns foreign financial assets, invests in foreign retirement plans or has made transactions in any such countries. NOTE: Penalty for failure to comply can be punitive.

**Timeliness**  
Client agrees to timely deliver requisite tax data and supporting documentation and will not hold FA responsible for delays due to Client's lack of cooperation during the tax preparation process. A surcharge of 5% may be assessed if Client provides data to LA more than 10 days after EA's initial request. EA may terminate contract without further notice, if Client fails to provide requested data. NOTE: EA will give priority of services to clients who have timely provided data and otherwise cooperated with the tax preparation process.

**Estimates (Not Accrual Method)**  
The filing deadline for individual returns is April 15<sup>th</sup> (or 15<sup>th</sup> if not subject to other deadlines). If EA has not received Client's personal income tax data by March 31<sup>st</sup>, an extension request will be automatically filed by EA and Client will be assessed a \$50 processing fee unless Client has timely notified CA that an extension is needed (entity data must be submitted 30 days prior to applying for filing deadline). FA will not provide ongoing reminders of filing deadlines or requests for information. NOTE: Since an extension merely extends the time for filing (not payment), penalties and interest for late payment may accrue for which the Client will be wholly responsible. If Client wishes to authorize electronic funds withdrawal for any federal balance due, Form 8878 must be signed and submitted to LA; other forms may be required to authorize state tax authority or a non-automatically withdraw funds.

**Additional Items & Fees**  
Client understands that Client may be subject to additional tax filing requirements, including but not limited to prior-year and amended returns, payroll tax, 1099 reporting, business tax, sales and use tax, as well as foreign account reporting. If asked, FA will assist with the requisite forms. But Client remains responsible for establishing and meeting all of its reporting and payment obligations.

**Source Attribution**  
Client is under no obligation to engage FA from year to year. Nevertheless, FA hereby informs Client that Client may have annual tax filing obligations and must notify EA should Client wish to discontinue services or hire another practitioner.

**Client Records**  
Client is wholly responsible for the accuracy of the return and will, after careful review, sign and deliver the completed return(s) to the taxing authority or authorize EA to file electronically. NOTE: The law provides for a penalty to be assessed for substantial understatement of the tax liability. Client is responsible for all penalties and interest.

**Tax Notices**  
Client agrees to promptly notify and forward copies of any communications received from tax authorities to EA for review and advice. Client should keep all originals (including envelopes). If Client wishes to be represented by LA, additional forms, fees and orders are subject to be anticipated (see Representation Agreement). In lieu of signing Form 744, Client hereby authorizes EA to have voluntary access to all information available on FTB's website that is associated with Client's taxpayer ID (authorization remains in effect until revoked in writing).

**Communications**  
The primary method of information exchange between Client and FA will be electronic. Client must regularly update addresses with EA. Communications sent to Client's last-known e-mail address are deemed to have been delivered, whether or not Client acknowledges receipt. However, in absence of effective communications, Client is asked to respond to e-mail, even if only to say "Got It" or "Thank you".

**Payment Terms**  
When data is submitted to LA, Client will pay one-half of the applicable tax preparation fee (minimum preparation shall be \$400 in all cases). The balance is due upon delivery - whether physical or virtual - of the completed return, whether or not Client chooses to file the return as prepared. Payment may be made via cash, check or online by accessing the Payments page on EA's website ([www.mhaventax.com](http://www.mhaventax.com)) which links to PayPal™. Should any amount remain unpaid 10 days later, Client will forfeit all discounts which may have been previously applied. A penalty will be assessed each month based on an annual rate of 6% of the outstanding balance (minimum penalty \$25). No additional services will be provided by FA until the account has been brought current. Prepaid discounts are deemed non-refundable once the preparation process has begun. FA may take legal action to collect any outstanding fees and all costs incurred during the collection process will be added to Client's bill; additionally, Client's confidential tax information may be shared with third parties during the collection process. Don't miss checks returned for non-payment will be billed to Client (minimum fee \$40). Client will pay a \$50 penalty for any appointment missed and not cancelled with timely notification.

**Document Retention**  
EA's final work product will be retained for five years; thereafter, all documents will be destroyed by EA without further notice to Client. Physical destruction of sensitive information may shorten this term. Client understands and agrees that in the event a file is destroyed, FA will no longer have any records and will not have any responsibility to reconstruct the file. Client will assume all costs of shipping and storage should Client later notify FA that the file should be forwarded to Client prior to destruction. EA does not retain any physical documents that are returned to Client at the completion of the tax preparation process. It is Client's responsibility to keep these materials for future use (e.g., possible examination by the tax authorities). A duplicate paper or electronic copy of a return prepared by FA is available for \$30. Client may request the retrieval of physical files or data older than the prior tax year for a fee of \$150.

Please initial Page 1 to acknowledge Client Responsibilities: Client \_\_\_\_\_ Spouse (RDP): \_\_\_\_\_

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### Tax Practitioner Responsibilities

**Missed**  
Returns will be prepared based on information provided by Client. FA will not audit nor verify the data and may request additional material or clarification. EA will make every attempt to properly apply the law and legally minimize Client's tax liability. EA will exercise professional judgment and will, whenever possible and justifiable, attempt to resolve any issues involving the Code in favor of Client.

**Public Records**  
EA may not sign a return as a paid preparer if EA determines that the return contains a claim or that does not have a realistic possibility of being sustained on its merits, unless the position is not frivolous and is adequately disclosed to the IRS as per IRC 6698. EA must inform Client if penalties likely to apply regarding the position advised, prepared or reported and must advise Client of any opportunity to avoid such penalty by making adequate disclosure. EA may rely in good faith (without verification) upon all information furnished by Client; however, EA must make reasonable notice if information appears to be required, inconsistent or incomplete.

Client is hereby given notice that all communications throughout the tax preparation process with FA are confidential and not privileged and may be disclosed if a summons is issued. The working papers for this engagement are the property of EA and constitute confidential information. Any requests for access to these materials will be discussed with Client before making them available to other parties. Limited privilege may be available through the representation process under IRC 37635. Client may advise FA to assert this privilege in non-audited tax matters involving the Internal Revenue Service or federal district courts. Client, however, should be aware that disclosure of information transferred during the tax preparation process is not covered under privilege - only tax advice communications are covered. Client hereby agrees to reimburse EA for all costs, including legal fees, required to defend the privilege asserted or respond to a subpoena. Client should immediately engage legal counsel if Client has any concerns regarding possible criminal matters.

**Privacy**  
EA does not disclose non-public personal information about current or former clients to anyone unless instructed to do so in writing by Client (see Disclosure Authorization). EA will not perform a conflict check; Client remains solely responsible for identifying and disclosing actual or potential conflicts of interest to LA. If a joint return is filed, EA may provide reviews and copies of supporting documentation to either spouse without consent from or notification to the other spouse (see Spouse Consent Waiver). EA restricts access to non-public personal information to those individuals who may assist in the preparation process or provide adjunct services. FA has instituted all reasonable measures, including physical, electronic and procedural safeguards to protect Client's non-public personal information. Client assumes the risk of loss of confidential and/or tax documents during unrecorded electronic transmission or mailing via USPS and third-party delivery services.

EA will provide Client with a signed copy of the completed return. Client should retain this and all related materials saved for a minimum of five (5) years. EA will be available year-round to address any Client concerns and to provide tax-planning advice for an additional fee and only with Client's written consent, although FA will not be responsible for implementation of suggestions made (see IGA Consent Form).

EA's services are not intended to determine whether Client has filing requirements in taxing jurisdictions other than the one's Client has mentioned to FA; Client may purchase a nexus study under separate agreement for an additional fee. EA will not advise Client regarding the classification of workers as employees or independent contractors and urges Client to obtain competent legal advice regarding employment practice matters. FA will be responsible for the delivery by the USPS or other private carriers. Upon request, Client shall be provided with tracking information and may personally make arrangements and cover the costs of re-delivery or replacement of lost tax returns. EA may terminate engagement in Client's lack of cooperation with the preparatory process, for lack of payment, or for other reasons with written notice to Client at any time. Client agrees to indemnify and hold FA harmless from all claims, including third-party claims and other liabilities, costs and expenses incurred by reason of any action taken or omitted by using good faith arising out of this engagement, except for matters specifically determined to be caused by EA's gross negligence or bad faith.

**Engagement will begin** once Client has signed Agreement. However, in the event that Client does not return signed Agreement to EA but nonetheless verbally agrees (or otherwise indicates by such actions as submitting the tax organizer, providing tax data, or filing the prepared returns) that EA shall prepare returns on Client's behalf, all terms and conditions of this Agreement shall apply. Client's signature on federal and/or state e-file authorization form(s) shall be deemed acceptance by Client of all terms in Engagement Agreement. Engagement of FA's services will be deemed satisfied upon delivery of completed returns to Client who is solely responsible for filing all tax returns with the appropriate tax authorities. Additional services (e.g. tax planning, communications with tax authorities, preparing prior-year unfiled returns, etc.) may be provided under separate agreement between Client and EA.

**Dispute Resolution**  
Any dispute arising under this Agreement or relating to EA's services, including but not limited to disputes regarding fees, the scope of the engagement or professional malpractice, will be first submitted for non-binding mediation or alternative dispute resolution before litigation is filed. Litigation, if undertaken, shall be conducted in the County of Los Angeles, California according to California state law.

**Cost of Service**  
Fees for tax preparation will be based on the complexity of the return, expertise required and time expended by EA and will increase annually to maintain commensurate with the skill, knowledge, expertise and continuing education required by regulatory authorities. Extraordinary expenses and additional services, not but limited to tax file organization, data compilation, cost base calculations, research, replacement of lost returns, postage (300 min. fee for USPS delivery), correspondence with taxing authorities, bookkeeping, tax consultation and audit representation, will be billed on an hourly basis (\$275/hour). Client may pay by cash or check or PayPal™. Client's returns will not be e-filed until EA's fees have been paid in full or alternate payment arrangements have been agreed upon. For an additional fee, Client may purchase a Service Contract, entitling Client to free year-round tax consultation in lieu of a hourly fee, at a cost of \$150/Member/year if paid at time of return preparation or \$195 if paid later. Client may - when appropriate - be automatically invoiced for Service Contract at EA's discretion. Client agrees to review all invoices upon receipt; absent any objection within 30 days, the invoice will be deemed correct, due and payable in full.

Client, if eligible, may enjoy one of the following 15% discounts: Student, Senior, OutPatient, or Multi-Retiree. Client may also be eligible for an additional Early-Bird Discount (10%) if COMPLETED data is delivered to EA by February 7<sup>th</sup>, whereas a surcharge of 5% will be assessed for data delivered after March 16<sup>th</sup> if filing April 15<sup>th</sup> or September 15<sup>th</sup> (with filing October 15<sup>th</sup> penalty rates must be submitted 30 days prior to applicable filing deadline). All discounts will be voided if Client has not paid EA's invoice in full within 10 days after initial billing.

Please sign & date Page 2 to confirm acceptance of this Agreement in its entirety (if married, both spouses must sign):

Client Signature: _____	Print Name: _____	Date: _____
Spouse's (RDP's) Signature: _____	Print Name: _____	Date: _____

Monica Haven, E.R., J.D., LL.M.

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# SAMPLE: Divorce Addendum

**ADDENDUM TO ENGAGEMENT AGREEMENT  
FOR DIVORCED OR SEPARATING CLIENTS**

Client Names: \_\_\_\_\_  
*(Hereinafter referred to as "Clients")*

Tax Practitioner: Monica Haven, E.A.  
*(Hereinafter referred to as "EA")*

**Filing Status**  
Married parties who do not have a final decree of divorce on December 31<sup>st</sup>, may file a joint or separate tax return. **NOTE:** If a custodial parent files separately as "Head of Household", the party without physical custody of any children must then file as "Married Filing Separate"

**Conflicts**  
Clients understand that EA cannot prepare one return with information that is in conflict with the information provided on another return. If at any time, either party feels that this or another conflict of interest cannot be managed in an impartial manner, either or both Clients may terminate engagement of the EA.

**Disclosures**  
If a joint return is filed, EA may provide returns and copies of supporting documentation to either spouse without consent from or notification to the other spouse.

**Responsibility for Tax Owed**  
Joint filers are each liable for the entirety of any tax owed. The tax authorities will pursue each party for any tax due, regardless of any court mandates.

**Representation**  
If Clients' joint return is challenged at any time by a tax authority, Clients may engage EA to provide joint representation. At that time, each signatory on the originally filed tax return will be required to provide a separate signed Power of Attorney so that EA may provide assistance during the examination of the return.

**Privacy and Privilege**  
In compliance with the provisions of the Gramm-Leach-Bliley Act of 1999, Client is hereby informed that EA does not disclose any nonpublic personal information about current or former clients to anyone, except as it is needed to do so by such Client. EA restricts access to nonpublic personal information to those professionals who may assist in the preparation of Client's return or provide tax advisory and bookkeeping services. EA maintains physical, electronic, and procedural safeguards to protect Client's nonpublic personal information.

EA is generally not authorized to disclose tax return information for purposes other than the preparation and filing of the tax return, however EA may disclose tax return information to third parties with Client's consent to such disclosure. Once any information is disclosed to a third party per Client consent, EA has no control over what that third party does with the information. If the third party uses or discloses the information for purposes other than the purpose for which Client authorized the disclosure, EA is not responsible for that subsequent use or disclosure under federal tax law and Client may not be protected from that disclosure.

Clients have been informed that privilege—however limited—may be waived when communicating with EA in the presence of third parties.

**Client Acknowledgement**  
Client signatures below are acknowledgment that both parties understand and waive any conflict of interest as described above. Clients further acknowledge that EA has advised Clients to review this motor as well as all implications of the marriage dissolution agreement with legal counsel before signing this waiver.

Client Signature: _____	Date: _____
Print Client's Name: _____	
Spouse Signature (required): _____	Date: _____
Print Spouse's Name: _____	

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# Polling Question # 6

Tax pros should never offer advice outside their area(s) of expertise or engage in the unauthorized practice of law. Which of the following activities may be beyond the scope of a tax pro's purview?

- Choosing a business entity
- Classifying community property
- Establishing the valuation discount for a family limited partnership
- All of the above
- None of the above

# Looking beyond the Agreement



# Introduce Adjunct Documents

## Communications

Client agrees to *promptly* notify and forward copies of any communications received from tax authorities to EA for review and advice. If Client wishes to be represented by EA, additional fees and expenses should be anticipated [see separate Representation Agreement].

## Additional Services

EA will be available year-round to address any Client concerns and to provide tax-planning advice for an additional fee and only with Client's written consent, although EA will not be responsible for implementation of suggestions made [see separate Taxpayer Consent Form].



# Representation Agreement

- Use if communication with tax authorities is needed
- Offer buffet of services

## Scope

This document serves to confirm that Client has retained EA for representation in connection with income tax returns selected for examination by the

Internal Revenue Service

Franchise Tax Board

Year: \_\_\_\_\_

Client understands that he has engaged EA to represent him in **one issue only** and that **ensuing matters must be addressed via a new and separate engagement**. This contract covers

Audits

Collections\*

Appeals

Other: \_\_\_\_\_

\* Collection resolutions may run the gamut from full payment of Client's tax liability to payment on an installment plan to abatement merely of penalties and interest to audit reconsideration to deeming the account as uncollectible to an Offer-in-Compromise or even bankruptcy.

Client acknowledges that EA's representation **services do not include any litigation** in any state or federal court, nor before any other tax agency not mentioned above.

# SAMPLE: Representation Agreement

## REPRESENTATION AGREEMENT

2014-6

Acceptance by Client constitutes mutual understanding and agreement with all terms & engagement of Monica Haven  
(Mark shall not begin without signed Agreement on file)

Client Name(s): \_\_\_\_\_

### Scope

This document serves to confirm that Taxpayer (Client) has retained Limited Agent (EA) for representation in connection with income tax returns selected for examination by the

Internal Revenue Service  Franchise Tax Board Year: \_\_\_\_\_

Client understands that he has engaged EA to represent him in one issue only and that ensuing matters must be addressed via a new and separate engagement. This contract covers:

Audits  Collections  
 Appeals  Other: \_\_\_\_\_

\* Collection resolutions may put the game from full payment of tax liability to payment on an installment plan to abatement merely of penalties and interest to audit reconsideration to deeming the amount as uncollectible to an Offer-in-Compromise or even bankruptcy. Client acknowledges that EA's representation services do not include any litigation in any state or federal court, nor before any other tax agency not mentioned above.

### Supporting Documentation

Client agrees to provide LA with all tax records and documents upon request. Supporting data and financial disclosures may also be required. Client also agrees to provide a signed Power of Attorney, a complete copy of the relevant tax returns and any source documents as well as any government correspondence received pertaining to this matter. It is important to comply with deadlines set by the examining authorities as they are otherwise within their right to initiate enforcement actions. Should Client fail to supply documentation in a timely manner, EA reserves the right to terminate this agreement without further obligations.

### Communications

Once a Power of Attorney has been signed, it is important that Client does not communicate directly with the tax authorities. All calls and communications must be referred to EA immediately. If Client should receive any correspondence from a tax agency regarding a tax matter for which EA represents him, Client should open, read, and forward the letters immediately via mail or fax to EA. Client need not be afraid to sign for Certified Mail. If Client should receive any telephone calls from a tax collector, Client should get his name and number but not discuss any aspect of the problem, and call EA immediately. If Client has previously provided any information, documentation or disclosures to the tax authorities, it is imperative that Client inform LA thereof immediately. Upon resolution of this matter, Client shall revoke Power of Attorney.

### Potential Consultation

EA will have primary responsibility for all tax matters but may request advice and assistance from accountants and professionals with specific expertise, as deemed necessary and applicable. Client shall reimburse EA for any consultation costs, if incurred.

### Confidentiality

Client is hereby given notice that all communications throughout the representation process with EA are confidential. Notwithstanding, any information that may be disclosed if a summons is issued. The working papers for this engagement are the property of EA and constitute confidential information. Any requests for access to those materials will be discussed with Client before making them available to other parties. Limited privilege may be available during the representation process under IRC 57225. Client may advise LA to report this privilege in non-optional tax matters involving the Internal Revenue Service or federal district courts. Client, however, should be aware that disclosure of information considered during the representation process is not covered under privilege, only tax advice communications are covered. Client hereby agrees to reimburse EA for all costs, including legal fees, required to obtain the privilege asserted or respond to a subpoena. Client should immediately engage legal counsel if he has any concerns regarding possible criminal matters.

### Privacy

EA does not disclose nonpublic personal information about current or former clients to anyone unless authorized by writing to do so by Client (see Disclosure Authorization). EA will not perform a conflict check; Client remains solely responsible for identifying and disclosing actual or potential conflicts of interest to EA. If a joint return is filed, EA may provide returns and copies of supporting documentation to either spouse without consent from or notification to the other spouse (see Spousal Consent Waiver). EA restricts access to nonpublic personal information to those professionals who may assist in the representation process or provide adjunct nonpublic personal information. Client assumes the risk of loss of confidentiality and/or tax documents during unattended electronic transmission or mailing via USPS and third party delivery services. Client is hereby informed EA can provide tax and financial planning services only with Client's written consent. (See separate TICTA Consent form.)

### Solutions

If an Offer-in-Compromise is submitted in the Internal Revenue Service, Client understands that the statute of limitations is suspended while the offer is pending and for one additional year thereafter.

Please Initial Page 1 to confirm that you have read Page 1. Client: \_\_\_\_\_ Spouse (RDP): \_\_\_\_\_

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### Interim Actions

Collection enforcement by the tax authorities is typically suspended during negotiations, but EA cannot guarantee that enforcement or penalties levied upon Client's bank account will not be made. Thus, it is best to maintain minimal balances in your current account or even open a new account to protect your assets in the interim.

### Preventative Measures

To prevent future tax problems, Clients must comply with all filing and payment obligations, including adjusting wage withholdings, making proper and timely estimated and/or payroll tax payments, and filing subsequent tax returns on time. EA recommends that all Client use Certified Mail to verify all payments and filings sent to the tax agencies. Client may be required to establish and adhere to a budget and future success to avoid potential hardships.

### Emergency Procedures

Once EA assumes management of Client's case, levies and garnishments are rare, but possible. There are usually one-time occurrences and generally do not attach to future bank deposits. Client should not panic and do the following:

- Determine amount of attachment—the bank must send this amount to the IRS within 21 days and to the FTH within 10 days.
- Immediately fax a copy of the notification of garnishment to EA and provide contact information for bank representative responsible for responding to levies.

Levies of salaries and wages are uncommon but increased by the tax authority. Once again, Client must immediately fax a copy of the notification of attachment to EA and provide contact information for Payroll Department employee responsible for responding to levies. Please note that IRS wage levies typically attach approximately 82% of net take-home pay while the FTH attaches only 25%.

### Fee Arrangement

LA shall be compensated on an hourly basis at the rate of \$225. Extraordinary costs, including but not limited to telephone and fax charges, messenger services, postage, photocopying, research costs, travel and mileage expenses, shall also be billed to Client. A 10% handling fee amount of 50% of estimated charges is due upon initiation of the contract (maximum fee is \$700). Charges for all work done will be applied to against the retainer and additional amounts will be billed monthly. Client shall pay all levies promptly upon presentation. A penalty will be assessed monthly based on an annual rate of 10% of the outstanding balance. No additional services will be provided by EA until the account has been brought current. EA may take legal action to collect any outstanding fees and any legal costs incurred during the collection process will be added to Client's bill. EA will provide an estimate of fees in advance, but retains the right to modify the quote as the representation process continues. New issues are identified and/or additional work is required.

### Limitations

EA's services are not intended to determine whether Client has filing requirements in taxing jurisdictions other than the one(s) Client has mentioned to EA. EA will not advise Client regarding the classification of workers as employees or independent contractors and urge Client to obtain competent legal advice regarding employment jurisdiction matters. EA will not be responsible for misadventures by the USPS or other private carriers. Upon request, Client shall be provided with tracking information and may personally make arrangements to cover the costs of re-delivery or replacement of lost tax returns. EA may terminate engagement in Client's lack of cooperation with the representation process, for lack of payment or for other reasons with written notice to Client at any time. Client agrees to indemnify and hold EA harmless from all claims, including third party claims and other liabilities, costs and expenses incurred by reason of any action taken or omitted by using good faith arising out of this engagement, except for matters judicially determined to be caused by EA's gross negligence or bad faith.

### Termination of Contract

Either party may terminate this agreement at any time. However, Client shall be held responsible for all fees and expenses incurred up until LA has received formal written notification of contract termination. Upon conclusion of this engagement, EA's power of attorney is deemed revoked and EA shall have no further responsibility to Client or liability for his issues.

### Document Retention

Client's final work product will be retained for five years; thereafter, all documents will be destroyed without further notice to Client. Physical destruction or catastrophic events may hinder this term. Client understands and agrees that in the event a file is destroyed, LA will not incur have any records and will not have any responsibility to reconstruct the file. Client will assume all costs of shipping and storage should Client notify EA in a timely manner that the file should be forwarded to Client prior to destruction. EA does not retain any original documents as they are returned to Client at the completion of the representation process. It is the Client's responsibility to keep these materials for future use, including possible examination by the tax authorities. Client may request duplicate copies or electronic copy of a return that EA has prepared for a \$50 processing fee.

### Dispute Resolution

Any claim arising under this Agreement relating to EA's services, including but not limited to disputes regarding fees, the scope of the engagement or professional malpractice, will be first submitted for non-binding mediation or alternative dispute resolution before litigation is filed. Litigation, if undertaken, shall be conducted in the County of Los Angeles, California according to California state law.

### Waiver

CLIENT UNDERSTANDS THAT EACH SITUATION IS UNIQUE AND THAT IT IS DIFFICULT TO PREDICT THE OUTCOME. EA DOES NOT MAKE EITHER REPRESENTATIONS OR GUARANTEES REGARDING THE OUTCOME OF THIS CASE. FURTHERMORE, CLIENT UNDERSTANDS THAT ALL RESULTING LIABILITIES FOR TAXES, INTEREST, AND PENALTIES REMAIN WITH THE TAXPAYER.

Please sign & date Page 2 to confirm acceptance of this Agreement in its entirety (if married, both spouses must sign):

Client Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Spouse's (RDP's) Signature: \_\_\_\_\_ Print Name: \_\_\_\_\_ Date: \_\_\_\_\_

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# Taxpayer Consent to Use Tax Return Information

- Use to obtain client's approval to disclose information to 3<sup>rd</sup> parties or use information for non-tax prep purposes
  - Disclosures to tax authorities, courts, US-based tax return preparers & to obtain legal advice may be made without consent
  - Consent required to use name, address, SSN & tax info for tax planning (e.g., estimated tax computations), estate planning, investment consulting, etc.
- Must contain authorized language and adhere to formatting rules as per Rev. Proc. 2013-14 & 2013-19
- Valid only if:
  - Made knowingly & voluntarily
  - Signed & dated by taxpayer
  - Max duration = 1 year





# SAMPLE: Taxpayer Consent Form

## TAXPAYER CONSENT TO USE TAX RETURN INFORMATION

Federal law requires that this consent form be provided to you (Client). Unless authorized by law, Monica Haven, E.A. (EA) cannot disclose Client's tax return information to third parties for purposes other than the preparation and filing of Client's tax return without Client's consent. If Client consents to the disclosure of tax return information, federal law may not protect Client's tax return information from further use or distribution.

Client is not required to sign this form to engage EA's tax return preparation services. Because EA's ability to disclose Client's tax return information to another tax return preparer affects the tax return preparation services and the associated cost(s) that EA provides, EA may decline to provide Client with tax return preparation services or change the terms (including the cost) of the tax return preparation services that EA provides if Client does not sign this form. If Client agrees to the disclosure of tax return information, Client's consent is valid for the amount of time that Client specifies. If Client does not specify the duration of the consent, the consent is valid for one year from the date of signature.

This consent to disclose may result in Client's tax return information - including Client's Social Security Number (SSN) - to be disclosed to a tax return preparer located outside the United States (US). Both the tax return preparer in the US who will disclose Client's SSN and the tax return preparer located outside the US who will receive Client's SSN maintain adequate data protection safeguards as required under IRC § 7216 to protect Client's privacy and prevent unauthorized access to information. However, if Client consents to the disclosure of information, federal agencies may not be able to enforce US privacy laws against a tax return preparer located outside the US.

By signing below, Client also consents to use of any and all tax information contained in the Client's federal tax income tax returns and all supporting schedules for purposes other than mere preparation of the Client's tax return. Client agrees to allow EA to disclose Client's tax return information (including SSN) to another tax return preparer for purposes of providing assistance in the tax preparation process. Client further consents and agrees to allow EA to communicate information and recommendations to Client via e-mail, fax, mail, phone, and in person. Such communications may include, but are not limited to:

- Newsletters, web-blasts, articles, seminar announcements and promotional materials published by EA
- Tax Advice relating to events in Client's life such as college, marriage, divorce, business start-up, and retirement
- Tax Planning including forecasting potential tax obligations and computing estimated tax payments
- Retirement Tax Planning including Social Security benefits and distributions from retirement accounts
- Investment and Asset Advice related to the considerations of buying, selling and exchanging property including stocks, bonds, and real estate.
- Other tax and financial advice.

If Client believes that tax return information has been disclosed or used improperly in a manner unauthorized by law or without Client's permission, Client may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at (800) 368-4484 or e-mail at [complaints@tigr.treas.gov](mailto:complaints@tigr.treas.gov).

Duration of this consent: _____	Date: _____
Client Signature: _____	Print Name: _____
Spouse's Signature: _____	Print Name: _____
<input type="checkbox"/> If married, both spouses must sign.	

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# Polling Question # 7

The Taxpayer Consent Form must contain IRS-approved language and conform to specific formatting rules. Once signed, the taxpayer's consent remains valid for as long as the client and tax pro work together.

- True
- False

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# Disclosure Authorization

- Use to obtain client's consent to gather tax data & supporting documentation from 3<sup>rd</sup> parties

## Specific Authorization(s)

Client hereby authorizes EA to gather tax data and supporting documentation from, as well as share tax return information with the following individual(s): \_\_\_\_\_

# SAMPLE: Disclosure Authorization

**DISCLOSURE AUTHORIZATION**

Client Name(s): \_\_\_\_\_  
*(Hereinafter referred to as "Client")*

Tax Practitioner: Monica Haven, E.A.  
*(Hereinafter referred to as "EA")*

**Confidentiality**

Client is hereby given notice that all communications throughout the tax preparation process with EA are confidential, but not privileged and may be disclosed if a summons is issued. The working papers for this engagement are the property of EA and constitute confidential information. Any requests for access to these materials will be discussed with Client before making them available to other parties.

Limited privilege may be available during the representation process under Code §7525. Client may advise EA to assert this privilege in non-criminal taxation matters involving the Internal Revenue Service or federal district courts. Client, however, should be aware that disclosure of information considered during the tax preparation process is not covered under privilege—only tax advice communications are covered.

Client hereby agrees to reimburse EA for all costs, including attorney fees, required to defend the privilege asserted. Client should immediately engage legal counsel if concerned about possible criminal matters.

**Privacy**

In compliance with the provisions of the Gramm-Leach-Bliley Act of 1999, Client is hereby informed that EA does not disclose any non-public personal information about Client or former clients to anyone, except as instructed to do so by such Client. EA restricts access to non-public personal information to those professionals who may assist in the preparation of Client's return or provide tax advisory and bookkeeping services. EA maintains physical, electronic, and procedural safeguards to protect Client's non-public personal information.

EA is generally not authorized to disclose tax return information for purposes other than the preparation and filing of the tax return, however EA may disclose tax return information to third parties with Client's consent to such disclosure. Once any information is disclosed to a third party per Client consent, EA has no control over what that third party does with the information. The third party does or discloses the information for purposes other than the purpose for which Client authorized the disclosure, EA is not responsible for that subsequent use or disclosure under federal tax law and Client may not be protected from that disclosure.

**Specific Authorization(s) — if applicable**

Client hereby authorizes Monica Haven, E.A. to gather tax data and supporting documentation from, as well as share tax return information with the following individual(s): \_\_\_\_\_

Client has been informed that privilege—however limited—may be waived when communicating with EA in the presence of third parties.

<b>Client Signature:</b> _____	<b>Date:</b> _____
<b>Print Client's Name:</b> _____	
<b>Spouse Signature:</b> _____	<b>Date:</b> _____
<b>Print Spouse's Name:</b> _____	

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# SAMPLE: Precautionary Authorization

**PRECAUTIONARY DISCLOSURE AUTHORIZATION**

Client Name(s): \_\_\_\_\_  
*(Veronica Adams to us "Client")*

Tax Practitioner: Monica Haven, E.A.  
*(Veronica Adams to us "EA")*

**Special Circumstances**  
On occasion, I become concerned about a client when I have reason to suspect that the client may be suffering from confusion or memory loss. Some indicative signs may include failure to make estimated tax payments, bouncing checks, not paying bills, contributing to previously unfamiliar charities, making large gifts, transferring funds to non-family members, being unaware of excessive trading in a brokerage account or unusual bank account activity, and missing appointments. While there may be rational explanations for each action and no single action is indicative that a problem in fact exists, I worry.

But privacy restrictions prohibit me from contacting anyone other than the client to share my concerns or follow-up in an effort to protect my client's welfare. For just such situations, I must have the client's permission in advance to contact a family member or friend. This permission may be revoked at any time.

If you would like, you may now designate someone with whom I may communicate my concerns on your behalf:

Client hereby authorizes EA to contact the individual listed below if EA is unable to reach Client, if Client has not timely filed a tax return, or if EA has concerns about Client's financial conditions and personal welfare.
(NAME OF CONTACT) _____ PHONE _____
E-MAIL _____

**Confidentiality**  
Client is hereby given notice that all communications throughout the tax preparation process with EA are confidential, but not privileged and may be disclosed if the summons is issued. The working papers for this engagement are the property of EA and constitute confidential information. Any requests for access to these materials will be discussed with Client before making them available to other parties.

Limited privilege may be available during the representation process under Code §7525. Client may advise EA to assert this privilege in non-criminal tax matters involving the Internal Revenue Service or federal district courts. Client, however, should be aware that disclosure of information considered during the tax preparation process is not covered under privilege—only tax advice communications are covered. Client has been informed that privilege—however limited—may be waived when communicating with EA in the presence of third parties.

Client hereby agrees to reimburse EA for all costs, including attorney fees, required to defend the privilege asserted. Client should immediately engage legal counsel if concerned about possible criminal matters.

**Privacy**  
In compliance with the provisions of the Gramm-Leach-Bliley Act of 1999, Client is hereby informed that EA does not disclose any nonpublic personal information about current or former clients to anyone, except as instructed to do so by such Client. EA restricts access to nonpublic personal information to those professionals who may assist in the preparation of Client's return or provide tax advisory and bookkeeping services. EA maintains physical, electronic, and procedural safeguards to protect Client's nonpublic personal information.

EA is generally not authorized to disclose tax return information for purposes other than the preparation and filing of the tax return, however EA may disclose tax return information to third parties with Client's consent to such disclosure. Once any information is disclosed to a third party per Client consent, EA has no control over what that third party does with the information. If the third party uses or discloses the information for purposes other than the purpose for which Client authorized the disclosure, EA is not responsible for that subsequent use or disclosure under federal tax law and Client may not be protected from that disclosure.

Client Signature: _____	Date: _____
Print Client's Name: _____	

**Monica Haven, EA, JD, LLM**

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# Spousal Conflict Waiver

- Use to make clients aware of potential conflicts & offer opportunity to waive with informed consent
- Optional policies:
  - Fire one or both spouses in event of divorce or separation
  - Maintain continuity by retaining both spouses

## Potential Conflicts of Interest

In the past, EA has been engaged by both spouses to prepare your individual tax returns as well as advise and consult on other tax-related matters. **You have both requested that EA continues to provide these services to both of you,** despite the fact that the two of you are in the process of separating or divorcing.

There may be situations in which one party will be benefited and the other will be negatively affected. If EA becomes aware of such situations, **EA will disclose the consequences of such tax strategies to both of you** and it will be up to you both to agree in writing how to proceed. If no agreement can be reached between you, then EA can no longer provide services to both parties and will have to disengage.

*You should each **discuss this matter with your respective legal counsel** before signing this waiver.*

## Circular No. 230, §10.29

*A conflict of interest exists if [t]he representation of one client will be directly adverse to another client or [t]here is a significant risk that the representation... will be materially limited by the practitioner's responsibilities to another client, a former client or a third person, or by a personal interest of the practitioner... [However,] the practitioner may represent a client if [he] reasonably believes that [he] will be able to provide competent and diligent representation to each affected client; [t]he representation is not prohibited by law; and [e]ach affected client waives the conflict of interest... in writing...*



# SAMPLE: Spousal Conflict Waiver

**SPOUSAL (RDP) CONFLICT WAIVER**

Client Names: \_\_\_\_\_  
*(If Client(s) referred to us "Client")*

Tax Practitioner: Monica Haven, EA  
*(Hereinafter referred to as "EA")*

**Potential Conflict of Interest**

In the past, EA has been engaged by both spouses to prepare your individual tax returns as well as advise and consult on other tax-related matters. You have both requested that EA continue to provide these services to both of you, despite the fact that the two of you are in the process of divorcing.

A potential conflict of interest inherently exists due to the pending dissolution of your marriage. In preparing tax returns for each of you, there may be situations in which one party will be benefited and the other will be negatively affected. If EA becomes aware of such situations, EA will disclose the characteristics of such tax strategies to both of you and it will be up to you both to agree in writing how to proceed. If no agreement can be reached between you, then EA can no longer provide services to both parties and will have to discharge.

**Privacy and Privilege**

If a joint return is filed, EA may provide returns and copies of supporting documentation to either spouse without consent from or notification to the other spouse.

In compliance with the provisions of the Gramm-Leach-Bliley Act of 1999, Client is hereby informed that EA does not disclose any nonpublic personal information about current or former clients to anyone, except as instructed to do so by such Client. EA restricts access to nonpublic personal information to those professionals who may assist in the preparation of Client's return or provide tax advisory and bookkeeping services. EA maintains physical, electronic, and procedural safeguards to protect Client's nonpublic personal information.

EA is generally not authorized to disclose tax return information for purposes other than the preparation and filing of the tax return, however, EA may disclose tax return information to third parties with Client's consent to such disclosure. Once any information is disclosed to a third party per Client consent, EA has no control over what that third party does with the information. If the third party uses or discloses the information for purposes other than the purpose for which Client authorized the disclosure, EA is not responsible for that subsequent use or disclosure under federal tax law and Client may not be protected from that disclosure.

Clients have been informed that privilege—however limited—may be waived when communicating with EA in the presence of third parties.

**Client Acknowledgment**

Clients' signatures below are acknowledgment that you both understand and waive any conflict of interest as described above. You may, of course, review this issue with your legal counsel before signing this waiver.

Client Signature: _____	Date: _____
Print Client's Name: _____	
Spouse Signature (required): _____	Date: _____
Print Spouse's Name: _____	

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# Disengagement Letter



- Use to formally dissolve the professional relationship (unless automatically terminated as per terms of Engagement Agreement)
- Remind (ex)client that (s)he:
  - Remains responsible for meeting all filing obligations in a timely manner
  - Should engage a new professional (if needed)
  - Must pay outstanding balances for services already provided [practitioner cannot hold client-provided documents “hostage”]
- Offer to cooperate & provide taxpayer information to new practitioner
  - Obtain signed Disclosure Authorization, OR
  - Incorporate client’s signed release into Disengagement Letter

## Circular No. 230, §10.28

*...[P]ractitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations... The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility... [However], if applicable state law allows or permits the retention of a client's records [i]n the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's return.*



# Negative Engagement Letter

- Use to confirm engagement if client has not yet signed Engagement Agreement prior to start of work
- Acceptance may be signified when client:
  - Submits completed Organizer
  - Provides supporting tax data
  - Files the completed return(s)

## **ENGAGEMENT AGREEMENT FOR TY 2018**

Acceptance by Client constitutes mutual understanding and agreement with all terms & engagement of  
Monica Haven (EA)

*(Work will not begin without signed Agreement on file)*

Engagement will begin once Client has signed Agreement; however, in the event that Client does not return signed Agreement to EA but nonetheless verbally agrees (or otherwise indicates by such actions as submitting the tax organizer, providing tax data, or filing the prepared returns) that EA shall prepare returns on Client's behalf, all terms and conditions of this Agreement shall apply. Client's signature on federal and/or state e-file authorization form(s) shall be deemed acceptance by Client of all terms in Engagement Agreement.

# Non-engagement Letter

- Use to ensure taxpayer understanding that practitioner has *not* been engaged
- Misunderstandings may occur:
  - During introductory appointment
  - Client interview
  - Exchange of e-mails
  - Preliminary telephone consultation
- Clarify that practitioner will not render services & is not liable to taxpayer
- Document practitioner's effort to obtain client's acknowledgment

**NOT X HIRED**





# Polling Question # 8

Choose the incorrect statement:

- An **Engagement Letter** is used to outline an understanding between the tax pro and his client and guarantee that no legal battles will ensue.
- A **Negative Engagement Letter** may be used to confirm a professional relationship when an Engagement Agreement has not yet been signed.
- A **Disengagement Letter** may be used to formally dissolve a professional relationship.
- A **Non-engagement Letter** may be used to clarify that the tax pro has not been hired.



# Practice (makes) Perfect

- This is NOT a do-it-yourself project
- Collect ideas from various sources:
  - Other practitioners
  - Professional associations
  - Published articles
  - Classroom instruction & webinars
  - Your insurance company
- Draft a preliminary version that fits your style & practice
- Have it reviewed by an experienced business-law attorney in your state



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