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ETHICS POTPOURRI: 10 TIPS TO HELP YOU SLEEP AT NIGHT

Higher Education Tax Institute

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Objective

Regardless of their credentials and experience — as well as the setting in which they work — tax practitioners risk uncertainty and sleepless nights in balancing their duties to clients, employers (or firms), and the community at large. This session offers 10 tips to mitigate tax ethics insomnia, from confirming who your client is, to knowing what professional standards apply, to understanding how to keep up to date and to safeguard confidences. Also covered are whether and when to rely on outside experts as well as what your obligations — and options — are when conflicts arise or when you, your client, or an outside expert makes a mistake. Attending this session may not eliminate the risk of tax insomnia, but it is designed to reduce your potential for sleepless nights.

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Speaker

Timothy J. McCormally is a tax attorney in Arlington, Virginia. During his nearly five-decade career, he has worked in a law firm (the predecessor of Eversheds Sutherland), an accounting firm (KPMG), a nonprofit association whose members are in-house professionals (Tax Executives Institute), and the Internal Revenue Service. Most recently, Timothy was Special Counsel to the IRS Office of Professional Responsibility; from September 2022 to April 2023, he served as OPR's Acting Director. For three years during his tenure with TEI, Timothy was named one of the top 10 most influential people in the sphere of global taxation by the U.K. publication *Tax Business.*

Timothy received his bachelor's degree from the University of Iowa and his law degree from Georgetown University Law Center. He is a frequent speaker and author on tax ethics, professionalism, and managing tax controversies. His most recent article, *Avoiding Willful Blindness: Due Diligence in Conservation Easement Cases*, was published by *Tax Notes* in June 2024. He has also published a book of poetry and served four years on the Internal Revenue Service Advisory Council, including one as Chair of the group.

1. Know what ethics are (1 of 3)

- Introductory questions:
  1. Did you miss school the day they taught students not to lie, cheat, or steal? Did anyone? (Have you ever tried to parse the Ten Commandments?)
  2. Do you know what the *Wall Street Journal* test is?
     - Knowing whether it is permissible to share your Dow Jones login and password with a family member of colleague.
     - Determining whether your bosses think it would be okay for the company's tax strategy to be disclosed on the front page of *The Wall Street Journal.*
     - Wondering whether it is okay to take the newspaper that is across the hall from your hotel room.
  3. Why are you attending this session: (a) you need Ethics training credit to maintain your professional credentials, (b) you are aware that attendance at ethics programs has been linked to a better workplace environment and fewer ethical breaches, or (c) you have a genuine desire to learn and to become a better tax professional?

1. Know what ethics are (2 of 3)

- Is there a difference between morality, ethics, and professionalism?
  - Morality is understanding the difference between right and wrong. It is influenced by society, culture, and religion.
  - Ethics is the philosophy of how morality guides individual or group behavior and how core moral principles govern behavior and guide decision-making. Ethics provide a framework for making moral choices and helping individuals distinguish between right and wrong. Examples of ethical principles are honesty, integrity, fairness, and respect.
  - Rules of morality are the foundation of ethics, but ethics are significantly influenced by and tailored to a particular profession, field, and organization.
  - Professionalism encompasses not only precepts of ethical conduct, but also concepts such as confidentiality, competence, due care, and avoiding conflicts of interest.
  - A person can act professionally (*e.g.*, follow company protocols) without acting ethically (e.g., allowing a wrongdoing to go unaddressed). Conversely, someone might act ethically but in an unprofessional manner (*e.g.*, blowing the whistle on a wrongdoing without following the proper company channels).

2. Know what standards apply (1 of 2)

- The Treasury Department (including the IRS) has had authority to regulate tax practitioners dates since 1884. (31 USC 330.) The implementing regulations, contained in "Circular 230," create a regulated community that includes attorneys, accountants, and enrolled agents. The IRS also regulates paid return preparers through provisions in the Internal Revenue Code.

- Tax ethics (and professionalism) involve the intersection of the profession-specific rules in Circular 230 with personal beliefs, legal requirements, professional codes of conduct, and practical experience.
  - Societal standards (religious, philosophical, and personal standards).
  - Workplace "culture" and codes of conduct of employer, client, or firm.
  - Statutory rules, including IRS penalties.
  - Professional society's code of conduct (*e.g.*, ABA Model Rules, AICPA Code of Professional Conduct, NAEA Code of Conduct, and TEI Standards of Conduct).

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