2026 WICPA ACCOUNTING & AUDITING CONFERENCE

YOUR SOURCE FOR KEY UPDATES & INSIGHTS ON TIMELY ISSUES

HIGHLIGHTED TOPICS:



ECONOMIC & FINANCIAL MARKET OUTLOOK

Explore inflation, interest rates, markets, policy and the forces shaping the year ahead



AI & THE FUTURE OF ACCOUNTING

Learn how to use AI strategically while strengthening the skills and judgment it can't replace



WHAT MATTERS NOW: FASB UPDATES

Review the latest FASB developments and what they mean for private companies

TUESDAY, NOV. 10 | WICPA OFFICE & WICPA CPE LIVESTREAM

MATERIALS AT A GLANCE

The following materials are from the afternoon sessions of the 2026 WICPA Accounting & Auditing Conference held on Tuesday, Nov. 10, including:

- Beyond the Basics: How AI is Rewriting the Skills, Risks & Judgment of Accounting & Auditing
- The Wealth Conversation: What Clients Really Want from Their CPA
- The Executive Technology Playbook: 10 Technology Risks Business Leaders Overlook
- Hot Tax Practice, Procedure & Ethics: What Practitioners Need to Know

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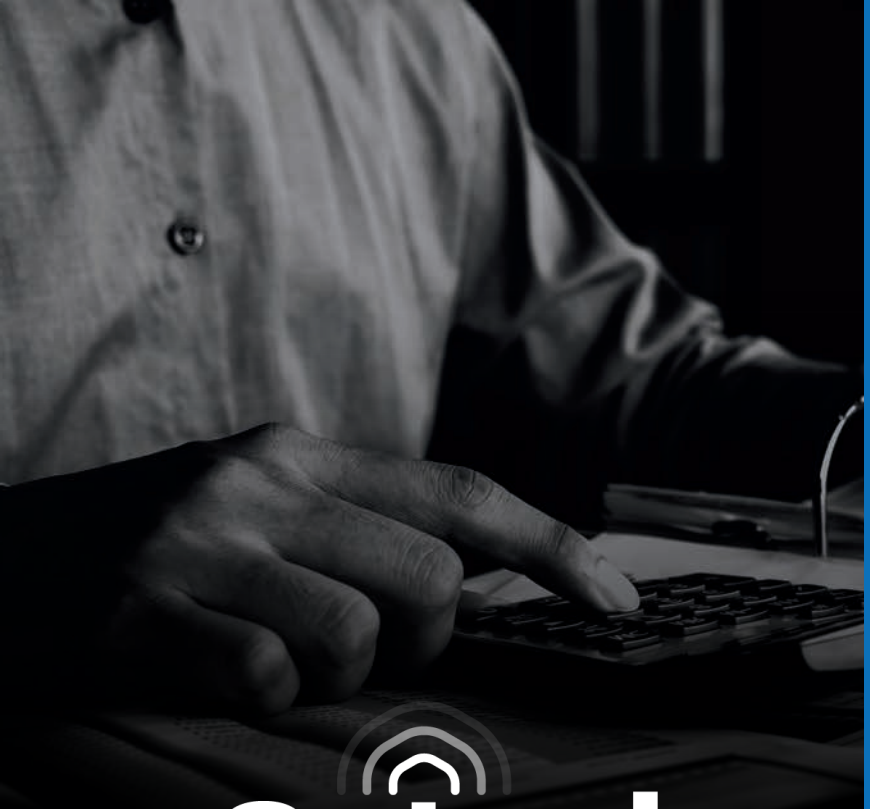

CYBER THREATS ARE INCREASING EVERY DAY.

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Source: www.cpapracticeadvisor.com

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2027 WICPA

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- ★ Accounting Student
- ★ Business & Management
- ★ CPA in Public Practice
- ★ Community Service
- ★ Distinguished Career
- ★ Diversity & Inclusion
- ★ Woman to Watch
- ★ Young Professional

Submit your nomination at **wicpa.org/awards** by Nov. 20, 2026.

Recipients will be announced in January and honored at the Member Recognition Banquet & Annual Business Meeting on May 7, 2027.

The individual nominated must be a WICPA member.

ATTRACT CLIENTS WITH OUR NEW FIND A CPA DIRECTORY

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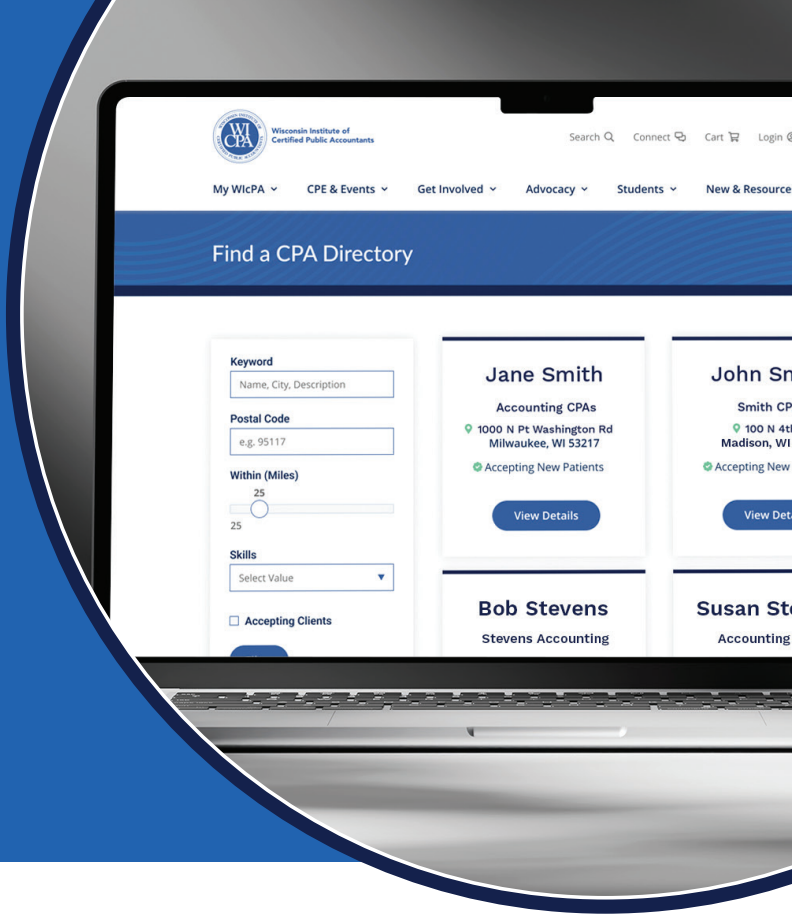

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Apply online at **wicpa.org/scholarships** through March 12, 2027.

WICPA Educational Foundation

Scholarships are awarded from the WICPA Educational Foundation to qualified accounting students that have completed at least 90 credits of a degree program that qualifies to sit for the CPA Exam.



YOUR NEXT OPPORTUNITY IS WAITING

Advance your career or find top talent within Wisconsin's CPA community

Whether you're growing your team or advancing your career, the WICPA Career Center connects you to what's next.

What's New in the Career Center?

- Advanced job search tools
- Resume visibility to top employers
- Direct connections with hiring firms
- Career advancement resources
- Streamlined job posting tools

Get in on the Action

- Post Job Openings
- Upload Your Resume
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Find or fill your next role.
Scan to Explore Opportunities

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- **Apply in minutes**
- **Connect with employers**

Start your search today: **wicpa.org/CareerCenter.**



JOIN A CONFERENCE PLANNING COMMITTEE

Participate in planning a WICPA conference and enjoy:

- FREE registration* (a $300-$400 value!)
- Exclusive networking
- Leadership skill development
- Recognition for your WICPA involvement
- Informal CPE credit

* To receive free conference registration:
  - attend one planning meeting ~ 2 hours
  - select topics
  - contact speakers
  - introduce speakers at conferences

2027 CONFERENCES

Accepting Volunteers

- MARCH 22 — BUSINESS & INDUSTRY SPRING CONFERENCE
- MAY 13 — FINANCIAL INSTITUTIONS CONFERENCE
- MAY 20 — SCHOOL DISTRICT AUDIT CONFERENCE
- SEPT. 14 — NOT-FOR-PROFIT ACCOUNTING CONFERENCE
- SEPT. 22 — BUSINESS & INDUSTRY FALL CONFERENCE
- NOV. 9 — ACCOUNTING & AUDITING CONFERENCE
- NOV. 15-16 — TAX CONFERENCE

For more information or to join a committee, visit **wicpa.org/committees**.

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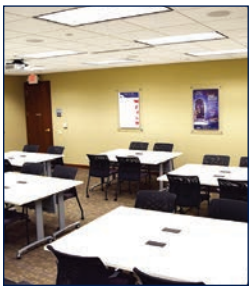
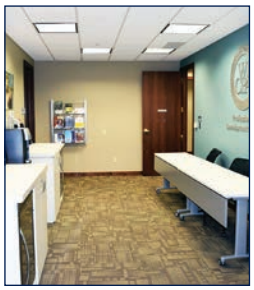




Training Center

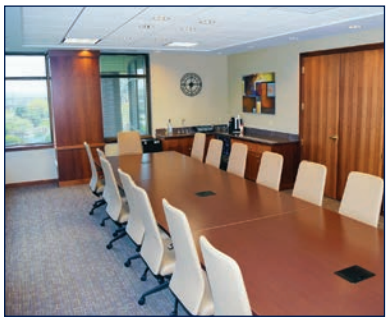
- Seats up to 60 (full room)
- Can be split to accommodate smaller groups
- Flexible room setups: Classroom, Pods, U-shape, Hollow Square
- Ceiling-mounted projector and retractable screens with multiple A/V connections
- Large whiteboards and Blu-ray/DVD player
- Electrical outlets in each table
- Private entrance and registration area
- Catering and refreshment area

	Full Room	Half Room
Member	$500/day	$350/day
Nonmember	$600/day	$450/day

Executive Boardroom

- Seats up to 20
- 80” TV with multiple A/V connections
- Equipped for video conferencing
- Granite countertop with sink and refrigerator

Member	$300/day
Nonmember	$400/day





For more information, visit wicpa.org/MeetingSpaces, or to schedule a tour or reserve space, contact the WICPA CPE Department at 262-785-0445.

SAVE THE DATE!

UPCOMING WICPA CONFERENCES & SPECIAL EVENTS

CONFERENCES

WICPA conferences are your source for key updates and insights on timely issues. As a WICPA member, you can save up to $150 on registration!

Tax Conference
Monday, Nov. 16 - Tuesday, Nov. 17
Brookfield Conference Center & WICPA CPE Livestream

Accounting Technology Conference
Thursday, Dec. 17
WICPA Office & WICPA CPE Livestream

Business & Industry Spring Conference
Monday, March 22, 2027
Brookfield Conference Center & WICPA CPE Livestream

Financial Institutions Conference
Thursday, May 13, 2027
WICPA CPE Livestream

School District Audit Conference
Thursday, May 20, 2027
WICPA CPE Livestream

SPECIAL EVENTS

WICPA special events are unique opportunities to connect with fellow members and provide a great way to socialize and have fun!

Bowling Night
Thursday, April 29, 2027
New Berlin Ale House

Member Recognition Banquet & Annual Business Meeting
Friday, May 7, 2027
Brookfield Conference Center

New CPA Banquet
Friday, June 11, 2027
Brookfield Conference Center

Golf Outing
Friday, Sept. 17, 2027
Ironwood Golf Course

Conveniently attend WICPA conferences from anywhere with an internet connection!

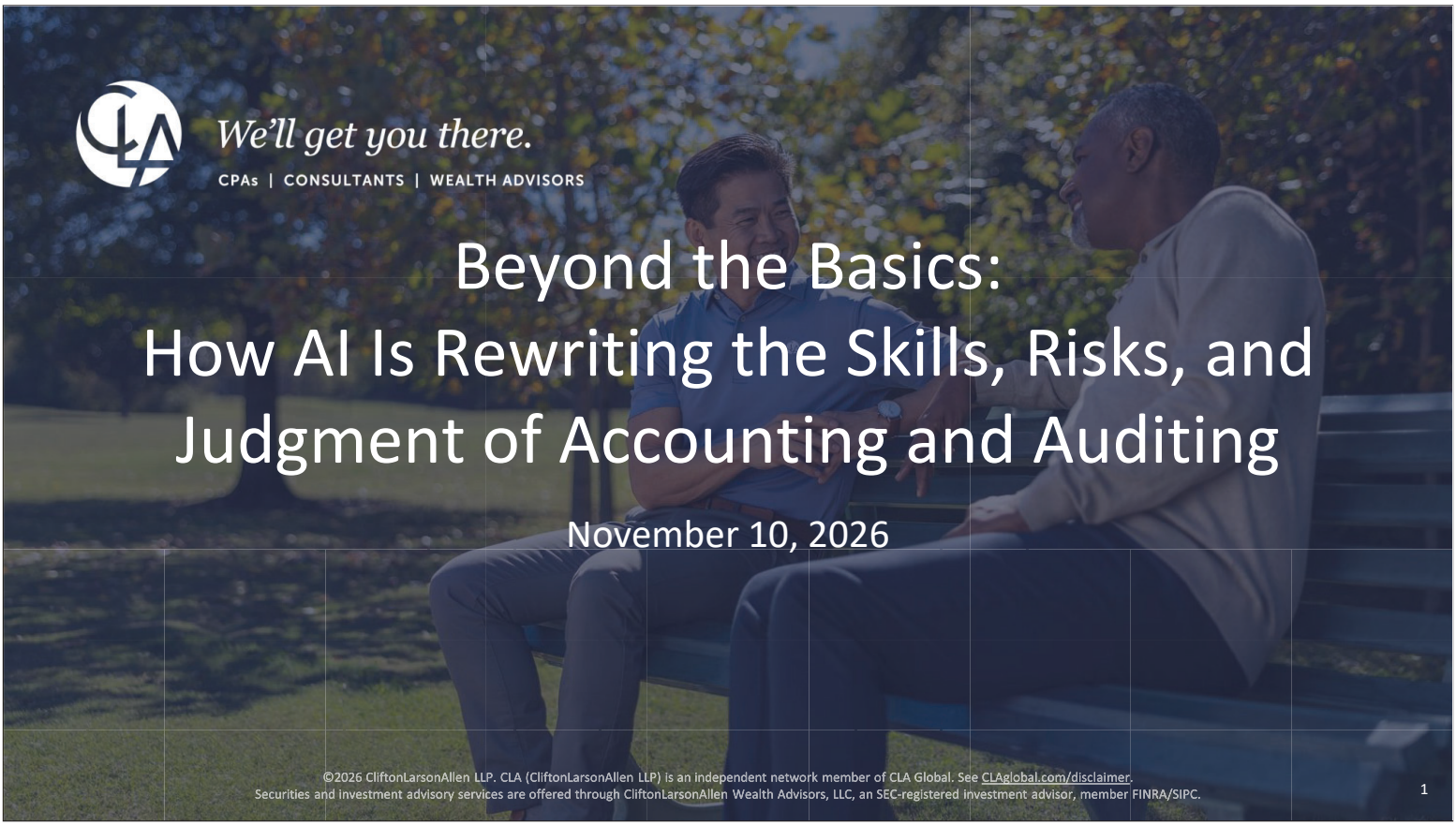
» Visit wicpa.org/cpe for a complete list of Livestream & On-Demand options

Registration opens approximately eight weeks prior. For more details about each and to register, visit wicpa.org/conferences and wicpa.org/events.

12:20 – 1:20 p.m.

Beyond the Basics: How AI is Rewriting the Skills, Risks & Judgment of Accounting & Auditing

Nick Borden, CPA, *Manager, CLA*
Sean Miller, CPA, *Manager, CLA*



Beyond the Basics: How AI Is Rewriting the Skills, Risks, and Judgment of Accounting and Auditing

November 10, 2026

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Presenting Today



Nick Borden
Manager
Assurance



Sean Miller
Principal
Assurance

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Today's Learning Objectives

- Identify how AI is changing the work of accounting and auditing professionals
- Recognize the critical role of professional judgment, skepticism, and communication in an AI-enabled environment
- Apply a practical framework for developing AI-related competencies within your organization

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"We are experiencing *100 years of innovation* in the coming 6 – 8 years."

— Satya Nadella, CEO of Microsoft

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A Ten-Year Journey, *Starting Now*



The Jagged Edge and Bottlenecks



Your people have the most powerful AI in their pocket



Today's AI is here to stay, and it will be better tomorrow



Everyone is now a professional in 5 minutes

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Types of AI Based on Functionality

Natural Language Processing (NLP): Sentiment analysis and conversational AI.

Computer vision: Image and facial recognition.

Machine learning: Predictive and prescriptive analytics, classification and anomaly detection

Generative AI: Creates new content such as text, images, audio, and video.

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Benefits of AI

Improve efficiency

- Automate repetitive tasks to save time
- Streamline workflows for faster processes

Improve accuracy

- Reduce human errors in data entry and analysis
- Provide consistent and reliable outputs

Improve capabilities

- Enhance with data-driven insights
- Implement innovative solutions to meet growing needs

Improve employee satisfaction

- Alleviate workload by automating mundane tasks
- Enable staff to focus on higher-value activities

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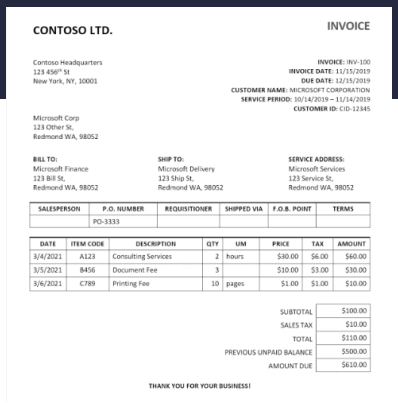
Democratization in the Adoption of AI

"For companies embracing the technology, 92% of employees say AI is having a positive impact on their work."

MIT Technology Review | Generative AI is empowering the digital workforce | MIT Technology Review | July 25, 2023



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DATE	ITEM CODE	DESCRIPTION	QTY	UM	PRICE	TAX	AMOUNT
3/4/2021	A123	Consulting Services	2	hours	$30.00	$6.00	$60.00
3/5/2021	B456	Document Fee	3		$10.00	$3.00	$30.00
3/6/2021	C789	Printing Fee	10	pages	$1.00	$1.00	$10.00

SUBTOTAL	$100.00
SALES TAX	$10.00
TOTAL	$110.00
PREVIOUS UNPAID BALANCE	$500.00
AMOUNT DUE	$610.00

THANK YOU FOR YOUR BUSINESS!

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The Skills AI Changes

AI can draft an answer quickly. Professionals still need to direct and test the work.

Frame the task

State the purpose, scope, source data, and expected output before using a tool.

Verify the source

Trace an accounting citation or extracted figure to the original document.

Investigate exceptions

Explain why an item is unusual and whether the tool missed similar items.

Communicate Judgement

Show the evidence, alternatives considered, and reason for the conclusion.

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Risks Behind a Convincing AI Answer

RISK	HOW IT SHOWS UP	PRACTICAL RESPONSE
Unsupported answer	A plausible GAAP citation does not say what the summary claims.	Open the source and read the relevant passage.
Incomplete inputs	The AP file excludes a payment account or a date range.	Reconcile the input population before interpreting flags.
Confidentiality	Client information enters a tool outside approved safeguards.	Use approved tools and data-handling rules.
Overreliance	A reviewer accepts an output because it appears precise.	Challenge assumptions and document independent review.



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Judgment Call: The Allowance Estimate

HYPOTHETICAL EXAMPLE

An AI analysis recommends a 60% allowance for self-pay receivables.

What range would the evidence support?

Management uses 35%.

Subsequent collections have slowed, but management expects several large balances to be paid.

Which fact would most change your conclusion?



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From AI Suggestion to a Supported Estimate

Understand	What method and inputs produced management's 35% estimate? What changed this year?
Test	Compare aging and historical collections with subsequent receipts and account-specific facts.
Challenge	Ask whether the AI used representative data. Investigate evidence that contradicts both estimates.
Conclude	Determine a supportable estimate or range.

The AI recommendation is an input to evaluate. Management and the auditor retain their distinct responsibilities.

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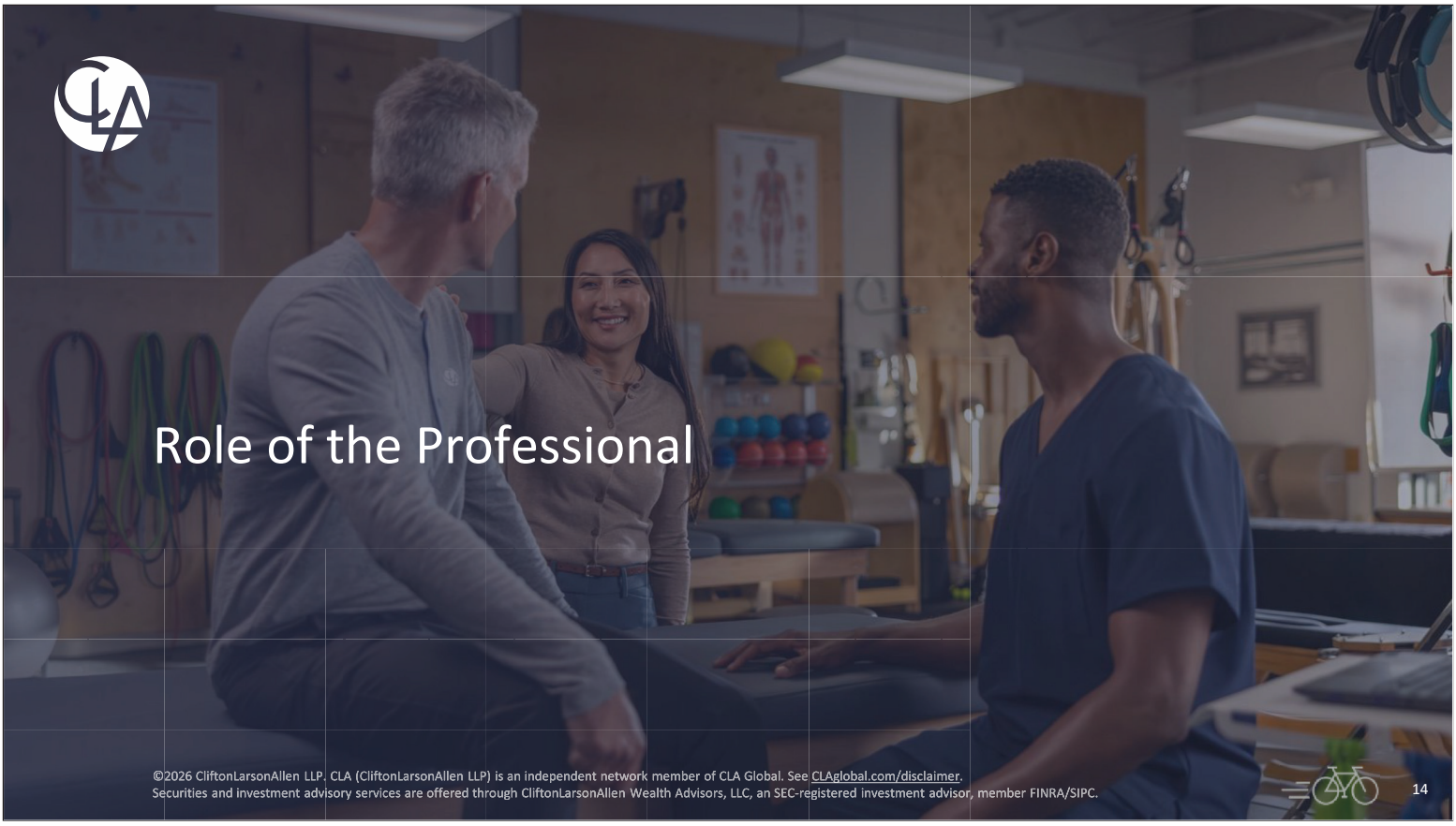

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Misconceptions of AI



LARGE SCALE AND COMPLEX IMPLEMENTATIONS



FULLY AUTONOMOUS



GUARANTEES PERFECT PREDICTIONS



REPLACE HUMAN JOBS COMPLETELY

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The Evolving Role of the Professional in Digital Governance



Value

Professionals need to champion technology that create ***value*** for the mission.

Risk

Professionals must extend oversight to monitor emerging digital and AI-related risks.

Change

Professionals must lead the change journey by fostering a democratized, experimental culture of innovation.

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Professional Competencies

Professional competencies shift from managing people to managing intelligence. As AI becomes part of the team, adaptability defines leadership.

Critical thinking	Delegation	Flexibility and creativity
		

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When AI Does the Hard Stuff… *What's Left for Us?*



Human differentiators: empathy, judgment, creativity, collaboration, ethics.



"If AI is the brain… humans are still the heart."



Exploration of uniquely human value in a tech-saturated future.

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Why Human Skills Accelerate Audit Impact



Within audit, communication is not a soft skill, but a fundamental skill.



Trust and influence



Trend in future of work

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Ways To Enhance Human Skills

Training and workshops

Coaching and mentoring

Role-playing and simulations

Continuous feedback

Frameworks and tools

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Human + AI Teaming

AI as a strategic teammate
Augments decision-making and operational efficiency, but humans remain accountable.

Validate and steward AI outputs
Retain user skills and confidence to improve quality.

Bridge experience gaps
Enables cross-functional collaboration without long knowledge catch-ups.

Boost engagement and efficiency
AI-assisted teams can reduce burnout and increase happiness.

Invest in critical thinking and AI literacy
Equip users to guide, critique, and challenge AI outputs for stronger governance.

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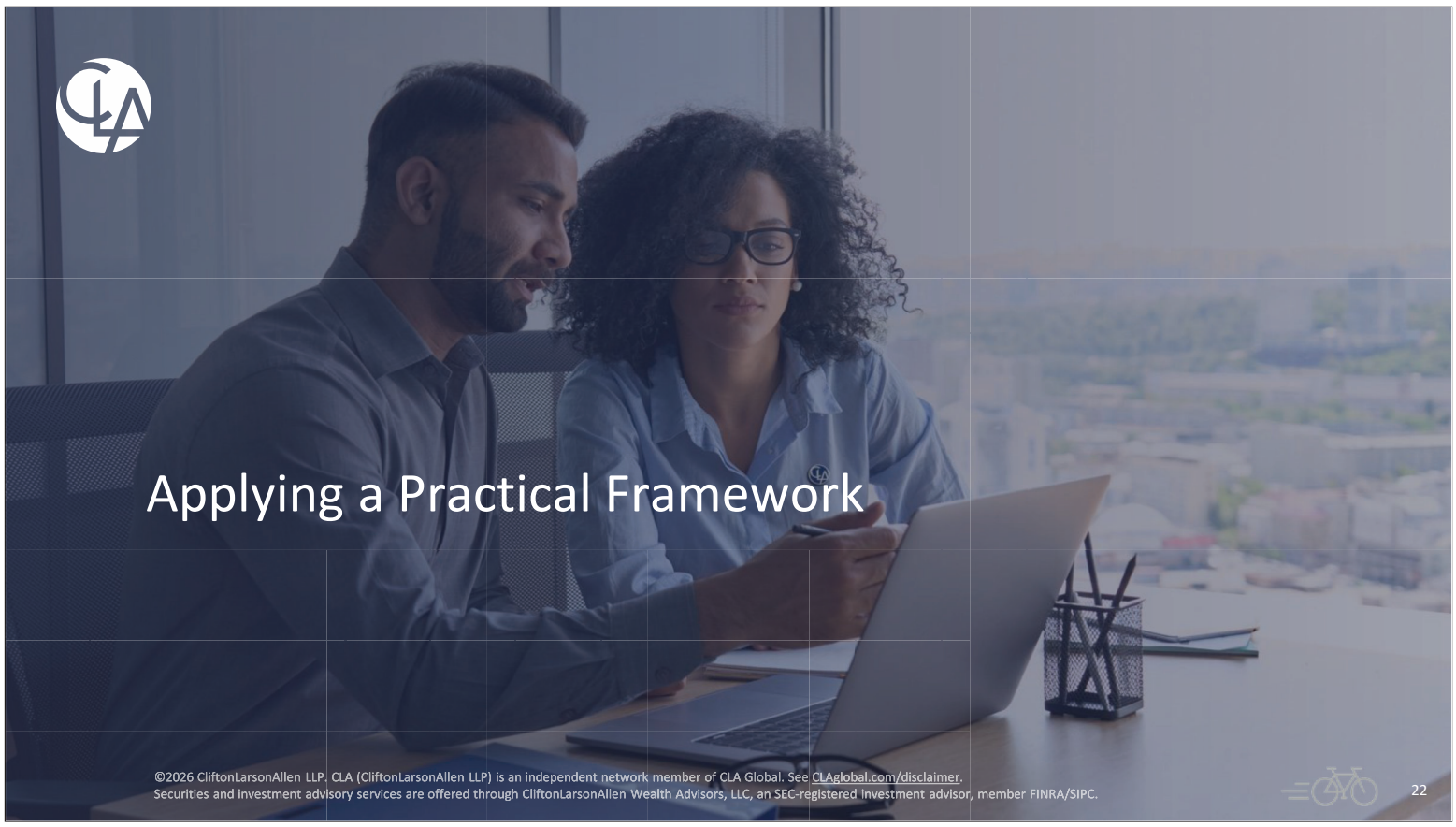

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You Need a Plan…



Diagnose before you prescribe…

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Why Does It Fail?

Poor user adoption

Failing to engage users in the process, not understanding the true pain of current obstacles, sacrificing outcomes for automation's sake

Misaligned stakeholders

Not having the right individuals buy in, driving change from the top down, failing to connect the "why" behind it all for your team

Out of order operations

Disregarding dependencies, creating holdups that increase timelines, fatiguing the organization over time

Underestimating training

Change is hard, "the chaos we know beats the process we don't," crossing your fingers and hoping for the one of the leading

Failing to understand true costs

Shooting from the hip, under budgeting, forgetting that sometimes you have to go slower to speed up

Overlooking interoperability

"We'll figure it out on the fly", not focusing on data quality and connectivity over 'shiny object syndrome'

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Removing Friction Points: Empowering People To Change

AI transformation succeeds or fails with people, not technology. Building literacy, trust, and incentives turns resistance into management.

Train	Motivate	Experiment	Communicate
Many staff see AI as a threat or mystery.	People adopt what they're rewarded for.	Fear of mistakes kills innovation and learning.	Miscommunication breeds resistance.
• Offer role-specific AI literacy training • Run hands-on workshops • Create AI champions	• Link performance goals to AI use • Recognize innovative teams • Introduce innovation micro-awards	• Establish sandbox environments • Encourage open dialogue about lessons learned • Share success stories	• Communicate the "why" • Use multi-channel communications • Celebrate milestones. Progress = business impact
Takeaway: Verify training is funded and accessible.	**Takeaway:** Incentives reinforce culture; reward curiosity and innovation.	**Takeaway:** Model transparency from the top. Give permission to learn and adapt.	**Takeaway:** Leadership should require regular communication updates as part of change oversight.

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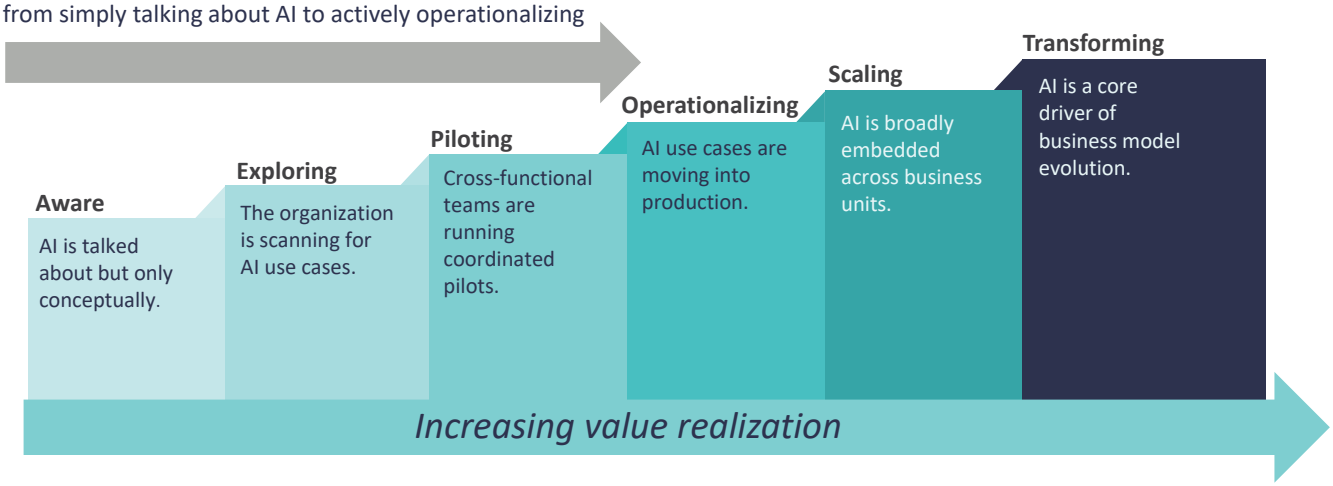
THE GOAL IS TO ACCELERATE VALUE CREATION

Accelerate the Impacts of AI Strategy

AI Strategy should move an organization **from AI interest to value realization**.

An effective AI strategy should move an organization from simply talking about AI to actively operationalizing



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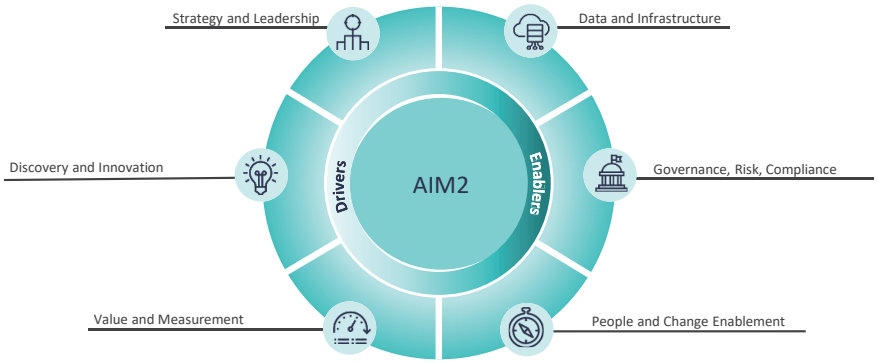
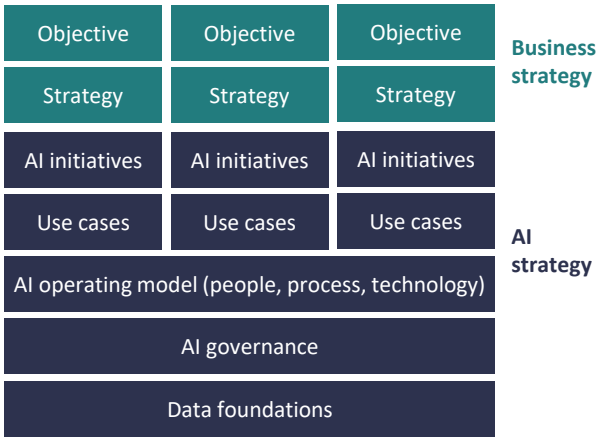
AI Is an Organizational Challenge, Not a Technology Gap

AI is an organizational transformation, not a technology deployment. Strategic advantage emerges when core enterprise capabilities are deliberately built and aligned.

CLA's AIM² Framework





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The AI Strategy, Governance, and Transformation Accelerator Model

1 Strategy and leadership

Vision
Develop a shared working draft of an AI vision with input from business, IT, and data leaders.

Strategy
Identify existing business strategy and link AI strategy to North Star objectives and vision.

Sponsorship
Create a basic RACI for early initiatives and develop a charter for a steering group.

2 Innovation and valuation

Use case intake
Launch an informal backlog or shared space for capturing ideas.

Prioritization
Draft early stage scoring rubrics for prioritizing use cases.

Experimentation
Identify low-risk, exploratory use cases that can be tested without major integration

Value framing
Beginning attaching value hypotheses to proposed pilots

3 Governance, risk, and compliance

Use policy
Create an AI acceptable use policy and embed in formal documentation

AI governance
Form an AI governance committee for evaluating use cases.

Infrastructure
Stand up enterprise grade AI strategies for safe experimentation.

4 Data and infrastructure

Accessibility
Map where critical data lives across systems in the enterprise.

Data governance
Define basic policies for data usage, retention, and sharing specific to pilot efforts.

Readiness
Document known data quality issues and conduct lightweight profiling.

5 People and change enablement

Communicate vision
Hold town halls and other dedicated meetings to communicate AI vision

AI literacy program
Develop customized awareness content based on function.

Initiate change management
Identify past technology implementations and what drove or hindered adoption.

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An AI Flag at Year-End

HYPOTHETICAL AUDIT CASE

The tool compares subsequent payments with the AP listing and flags 14 payments totaling $184,000 as possible unrecorded liabilities.

Would you propose an adjustment?

What information would change your answer?

Discuss with a neighbor for 60 seconds

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How To Evaluate the Flag

1 Check the inputs	Reconcile the payment file and AP listing to the underlying records. Check the dates, fields, and coverage.
2 Trace the transactions	Inspect invoices and receiving or service records to determine the period of the obligation.
3 Challenge the output	Investigate false positives and search for items the tool may have missed. Consider contradictory evidence.
4 Conclude and document	Evaluate the amount and cause of any misstatement. Document the work, judgment, and reviewer approval.

The tool identifies candidates. The audit team determines what the evidence supports.

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Develop AI Competency by Role

A practical framework: assign a task, teach the review, then observe the work.

ROLE	PRACTICE	EVIDENCE OF SKILL
All team members	Use approved tools and data. Verify sources before relying on an answer.	Complete a short exercise with a planted error.
Engagement teams	Define the task and input population. Challenge exceptions and document the disposition.	Review one AI-assisted workpaper or accounting analysis.
Managers and leaders	Set permitted uses, review expectations, escalation paths, and measures of quality.	Assess a pilot using quality and time results plus user feedback.

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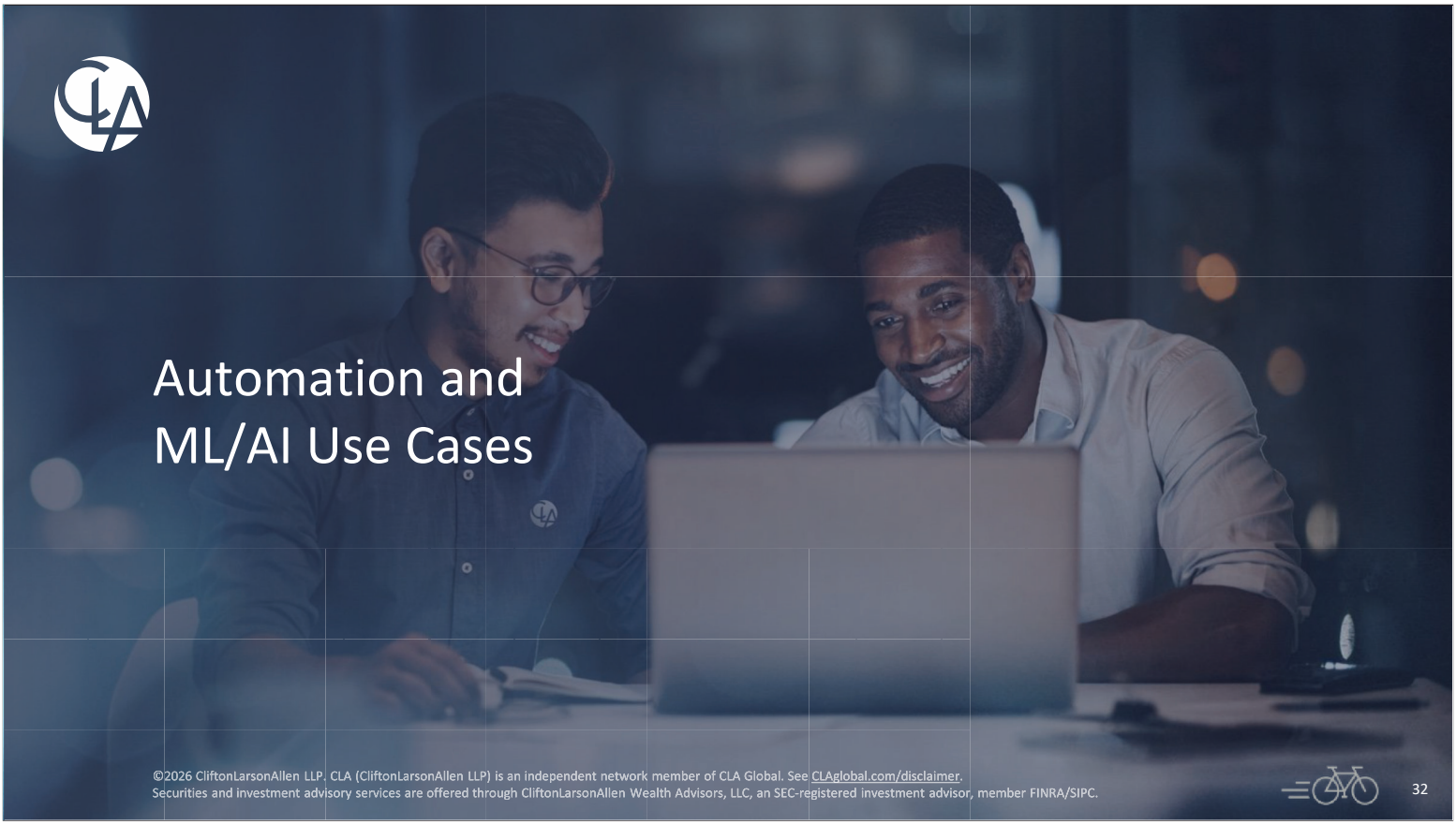

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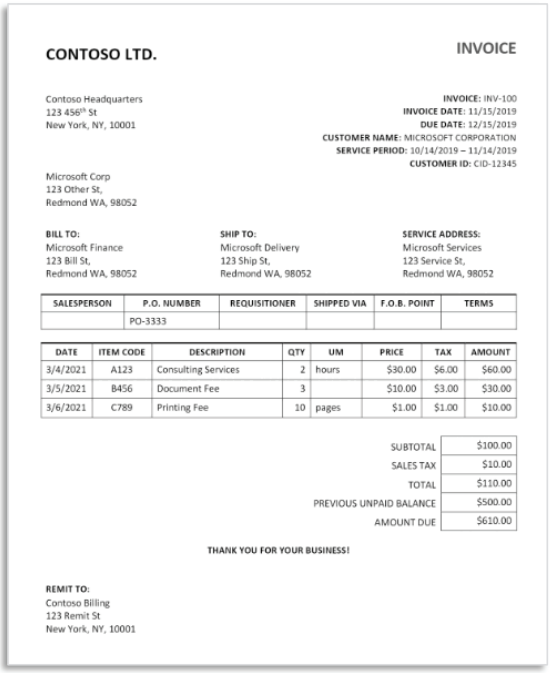
Machine Learning – AP Automation



CONTOSO LTD.

INVOICE

Contoso Headquarters
123 456th St
New York, NY, 10001

INVOICE: INV-100
INVOICE DATE: 11/15/2019
DUE DATE: 12/15/2019
CUSTOMER NAME: MICROSOFT CORPORATION
SERVICE PERIOD: 10/14/2019 – 11/14/2019
CUSTOMER ID: CID-12345

Microsoft Corp
123 Other St,
Redmond WA, 98052

BILL TO:
Microsoft Finance
123 Bill St,
Redmond WA, 98052

SHIP TO:
Microsoft Delivery
123 Ship St,
Redmond WA, 98052

SERVICE ADDRESS:
Microsoft Services
123 Service St,
Redmond WA, 98052

SALESPERSON	P.O. NUMBER	REQUISITIONER	SHIPPED VIA	F.O.B. POINT	TERMS
	PO-3333				

DATE	ITEM CODE	DESCRIPTION	QTY	UM	PRICE	TAX	AMOUNT
3/4/2021	A123	Consulting Services	2	hours	$30.00	$6.00	$60.00
3/5/2021	B456	Document Fee	3		$10.00	$3.00	$30.00
3/6/2021	C789	Printing Fee	10	pages	$1.00	$1.00	$10.00

SUBTOTAL	$100.00
SALES TAX	$10.00
TOTAL	$110.00
PREVIOUS UNPAID BALANCE	$500.00
AMOUNT DUE	$610.00

THANK YOU FOR YOUR BUSINESS!

REMIT TO:
Contoso Billing
123 Remit St
New York, NY, 10001

- Reduce manual data entry from documents such as invoices
- Minimize error associated with manual processing
- Integrate with existing workflow and enterprise systems including accounting systems

Reduction in manual invoice processing time by up to 90%

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AI for Accounts Payable



Cash discipline with fewer touches

Data in
Capture and extract

Data analysis
ML match to PO or GL code

Flag
Identify exceptions

Approve
Human in the loop

Invoice to insight, less manual keying

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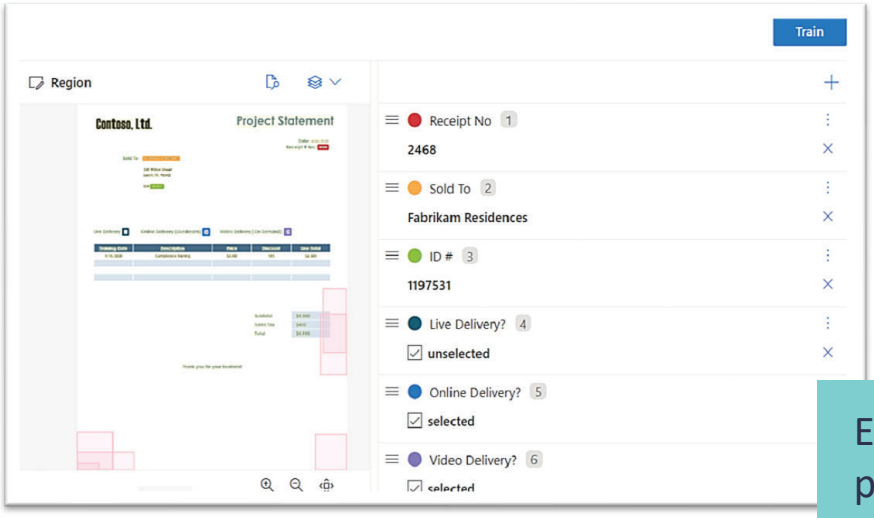
Cognitive Services for Document Intelligence



- AI-powered document processing and analysis
- Extracts, analyzes, and understands unstructured data
- Automates workflows for efficiency and accuracy
- Can train custom models for tailored document processing

Enhance automation with AI-powered document processing

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AI for Policies and Procedures

Private GPT to get the right answer instantly



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What the Tools Had in Common

A bounded workflow, with a clear output

Human oversight in places that matter

Visible value in time, quality, or decision support

Utilization of off-the-shelf components

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How To Get There

- Assess current state
- Develop a data strategy
- Craft a roadmap
- Short-term and long-term objectives
- Form a working group
- Test the technology
- Educate yourself!



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Thank you!

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1:30 – 2:30 p.m.

The Wealth Conversation: What Clients Really Want from Their CPA

Sherron Permashwar, CPA/PFS, *Founder, The Modern Savvy CPA, LLC*

the MODERN SAVVY CPA

The Wealth Conversation

What Clients Really Want from Their CPAs



Sherron Permashwar, CPA, PFS
Wealth & Financial Wellness Strategist · The Modern Savvy CPA

1

" My client just sent me another video."

CLIENT MESSAGE · ILLUSTRATIVE

▷ **Is this something I should be doing?**

2

What do our clients need?

How will we respond?

3

When you hear *"wealthy,"* who comes to mind?

- Established business owner
- First-generation entrepreneur
- Employee building assets
- Person receiving an inheritance

4

Building wealth	*“How do I make progress?”*
Receiving wealth	*“How do I manage this?”*
Managing wealth	*“How do the decisions connect?”*
Navigating change	*“What needs to change now?”*

Circumstances can overlap at any age.

5

Financial success does not tell us what someone understands.

“What would be helpful for us to explain?”

6

The conversation may begin *before the appointment.*

- Videos
- Podcasts
- Search
- Online communities
- AI tools

7

What would someone need to know *before acting on this?*

- **Eligibility**
- **Assumptions**
- **Limits**
- **Costs**
- **Consequences**

8

Social media can begin the research.

Before acting, ask:

- **Who is speaking?**
- **What supports the claim?**
- **What is missing?**
- **Does it apply to me?**
- **What are they selling?**

9

WHAT WE HEAR	MAY NEED
“Why didn't you tell me?”	→ **Proactive communication**
“Is this video right?”	→ **A credible explanation**
“What does this mean for me?”	→ **Relevant context**
“What should I do next?”	→ **Direction**
“I don't understand.”	→ **Education without embarrassment**
“Am I going to be okay?”	→ **An honest assessment**

10

"Help me understand."

What does it mean?

Why does it matter to me?

11

" Help me prepare."

What changes should I tell you about?

When should I contact you?

What support is included?

12

“ Understand what matters to me.”

“ What would you like this decision to make possible?”

13

Trust shows up *in the conversation.*

- Relevant expertise
- Clear explanations
- Honest limits
- Reliable follow-through

14

“I'm glad you brought this to me.”
me.”

“What caught your attention?”
attention?”

15

1 What it means → 2 Why it matters → 3 What comes next

16

AN ILLUSTRATIVE SITUATION

A business owner is considering a sale.

- **What outcome matters?**
- **What facts do we need?**
- **Who else should be involved?**

SEEING THE PERSON BEHIND THE DECISION · THE 3M WEALTH FORMULA

Money Motivation	Money Mindset	Money Mechanics
What matters to the client, and what what are they trying to accomplish? accomplish?	What beliefs, concerns, or emotions emotions may influence their decisions?	What financial facts, strategies, and technical considerations need to be evaluated?

17

Where can clients hear from us?

Between meetings

Before a decision

Where they already look for answers



18

What do you *repeatedly* explain?

A short video

A client email email

A LinkedIn post

A workshop or or FAQ

19

- **One question**
- A clear explanation
- Relevant limitations
- A sensible next step step

General education needs context.

20

45 seconds

Write down one recurring client question.

What concern might sit underneath it?

What would you ask to find out?

21

1. What it means
2. Why it matters
3. What comes next

Draft a brief response to your question.

22

Choose one change.

Improve a recurring recurring explanation.

Create a useful client client touchpoint.

Publish one educational piece.

Put a date on it.

What do our clients need?

How will we respond?

Clarity • Context • Preparation • Education

Will they think to ask us
before they act?

25

the MODERN SAVVY CPA

The Conversation *Doesn't End Here.*

Sherron Permashwar, CPA, PFS
The Modern Savvy CPA

RICH LIFE MONEY QUIZ
learn.modernsavvycpa.com/therichlifemoneyquiz

RICH LIFE HUB
learn.modernsavvycpa.com

LINKEDIN
linkedin.com/in/themodernsavvycpa

Discover Your Rich Life Life

Take the Rich Life Money Quiz to explore your Money Motivation, Money Mindset, and Money Mechanics.

26

2:40 – 3:30 p.m.

The Executive Technology Playbook: 10 Technology Risks Leaders Overlook

Scott Hirschfeld, *President, CTaccess, Inc.*

ctaccess

THE EXECUTIVE TECHNOLOGY PLAYBOOK

10 Technology Risks Business Leaders Overlook

Scott Hirschfeld
President
CTaccess, Inc.

WICPA • 2026

1

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The biggest technology risks often have very little to do with technology.

- $ **Lost revenue**
- ↻ **Operational disruption**
- ! **Unexpected cost**

Planning • Leadership • People • Process

2

SESSION ROADMAP

10 risks at a glance

1. Strategic Planning Risk
2. Technology Debt Risk
3. Knowledge Concentration Risk
4. Third-Party Risk
5. AI Risk
6. Technology Governance Risk
7. Human Risk
8. Business Continuity Risk
9. Recovery Risk
10. Cybersecurity Risk

3

Most organizations focus on the outcome.

Breach | Outage | Fraud | Data loss

Today's discussion focuses on the conditions that create the outcome.

4

RISK 1 OF 10

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Strategic Planning Risk



This didn't happen all at once. It happened one decision at a time.

5

RISK 1 OF 10

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Strategic Planning Risk

? WHY IT'S OVERLOOKED

Technology is treated as an operational function rather than part of business planning.

! BUSINESS IMPACT

- Reactive and unpredictable spending
- Overbuilt or underbuilt systems
- Investments misaligned with business priorities

✓ WHAT GOOD LOOKS LIKE

- Regular strategic conversations with IT
- Technology included in annual planning
- A documented roadmap and budget

LEADERSHIP QUESTION — **Is technology helping drive our strategy, or merely reacting to it?**

6

RISK 2 OF 10

Technology Debt Risk

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The longer you wait, the harder it becomes to move.

RISK 2 OF 10

Technology Debt Risk

ctaccess

? WHY IT'S OVERLOOKED

Everything still works, so upgrades and replacements feel optional.

! BUSINESS IMPACT

- Reduced agility and limited integration
- Greater security and operational risk
- Routine upgrades become interconnected projects

✓ WHAT GOOD LOOKS LIKE

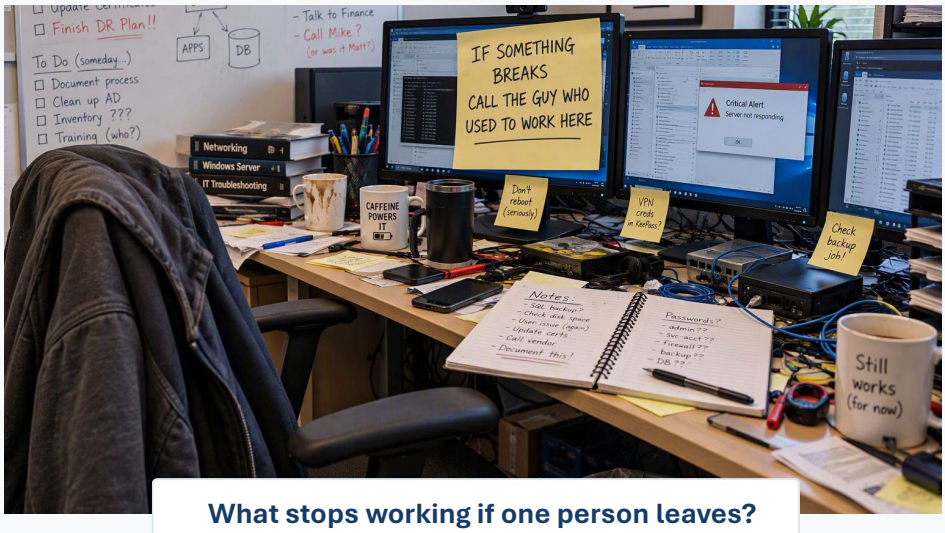
- Complete hardware and software inventory
- Lifecycle and end-of-support roadmap
- Planned replacement and modernization budget

LEADERSHIP QUESTION

What are we unable to do because something else is too old?

RISK 3 OF 10

Knowledge Concentration Risk



What stops working if one person leaves?

RISK 3 OF 10

Knowledge Concentration Risk

WHY IT'S OVERLOOKED

The person who knows how everything works is reliable, available, and always willing to help.

BUSINESS IMPACT

- Critical work stops when that person is unavailable
- Knowledge must be painfully rediscovered
- Departures create disruption, expense, and delays

WHAT GOOD LOOKS LIKE

- Current process and system documentation
- Cross-training for critical responsibilities
- Knowledge shared across a team or trusted partner

LEADERSHIP QUESTION — **What stops working if one person leaves?**

RISK 4 OF 10

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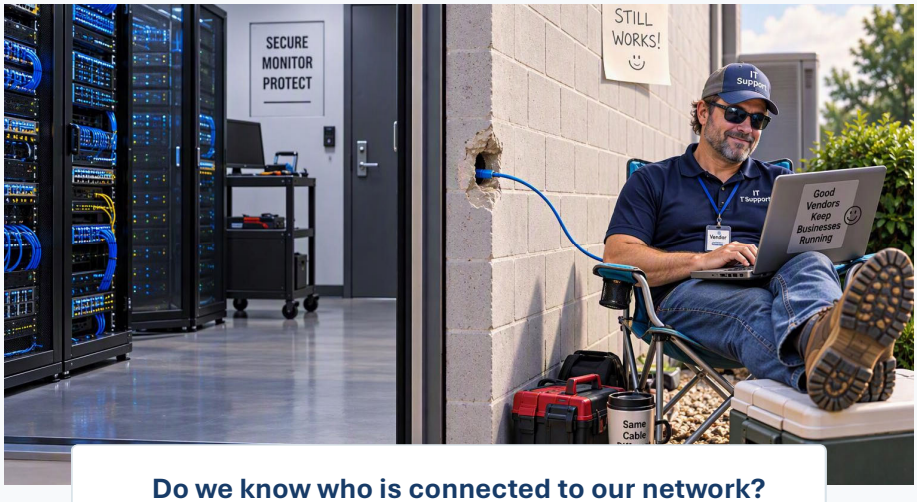
Third-Party Risk



Do we know who is connected to our network?

11

RISK 4 OF 10

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Third-Party Risk

? WHY IT'S OVERLOOKED

Trusted vendors often retain access long after the original need or setup has faded from view.

! BUSINESS IMPACT

- Unauthorized or poorly secured access paths
- Exposure to outages, breaches, and data loss
- Limited control during a provider incident

✓ WHAT GOOD LOOKS LIKE

- Vendor access documented and reviewed regularly
- Secure remote access with MFA
- Cloud providers evaluated for security and resilience

LEADERSHIP QUESTION — **Do we know who has access to our systems and data, and whether they still need it?**

12

RISK 5 OF 10

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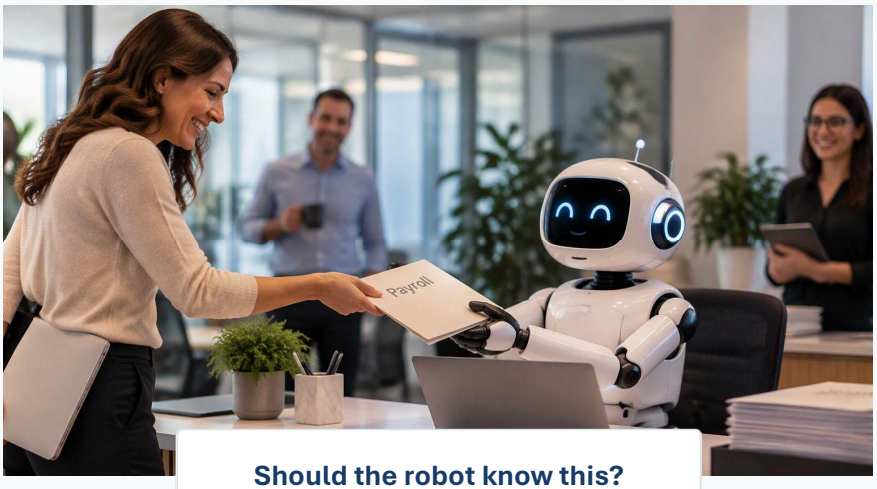
AI Risk



Should the robot know this?

13

RISK 5 OF 10

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AI Risk

? WHY IT'S OVERLOOKED

AI adoption often happens informally, outside normal technology approval and oversight.

! BUSINESS IMPACT

- Confidential information may leave the organization
- Unreviewed output can introduce errors and poor decisions
- Total restriction can drive shadow AI and leave the organization behind

✓ WHAT GOOD LOOKS LIKE

- Clear and practical AI-use guidelines
- Approved tools with appropriate data protections
- Employee training and human review

LEADERSHIP QUESTION

Do employees know which AI tools they may use and what they should never share?

14

RISK 6 OF 10

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Technology Governance Risk



Everyone has advice. Who has the plan?

RISK 6 OF 10

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Technology Governance Risk

? WHY IT'S OVERLOOKED

Technology decisions are delegated without enough business oversight or a clear evaluation process.

! BUSINESS IMPACT

- Investments may not align with business priorities
- Vendors or emergencies can drive major decisions
- Leadership lacks visibility into risks, costs, and priorities

✓ WHAT GOOD LOOKS LIKE

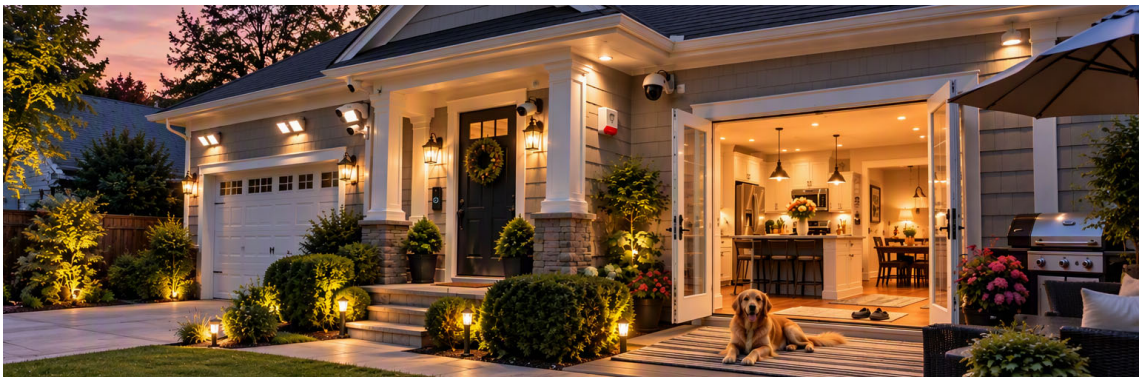
- Clear ownership for technology decisions
- Business objectives guide investment priorities
- Regular reporting, review, and strategic guidance

LEADERSHIP QUESTION

When everyone has advice, who evaluates the options and owns the decision?

RISK 7 OF 10

Human Risk



We secured the whole house. Then someone left the door open.

17

RISK 7 OF 10

Human Risk

WHY IT'S OVERLOOKED

Leaders often assume technology can compensate for risky human behavior.

BUSINESS IMPACT

- Greater exposure to phishing, fraud, and data loss
- Employee mistakes can bypass strong technical controls
- Incidents disrupt operations and damage trust

WHAT GOOD LOOKS LIKE

- Ongoing awareness training and phishing tests
- Employees recognize and report suspicious activity
- Practical policies reinforced by leadership

LEADERSHIP QUESTION

Which of our controls depend on people doing the right thing every time?

18

RISK 8 OF 10

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Business Continuity Risk



What happens when our only route becomes unavailable?

RISK 8 OF 10

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Business Continuity Risk

? WHY IT'S OVERLOOKED

Leaders focus on preventing disruptions rather than planning how the business will operate during one.

! BUSINESS IMPACT

- Critical operations may stop for an extended period
- Employees may not know how to serve customers
- Disruption creates financial loss and damages confidence

✓ WHAT GOOD LOOKS LIKE

- Critical functions and dependencies identified
- Alternate ways of working documented and understood
- Continuity plans tested and updated

LEADERSHIP QUESTION — **How would we continue operating if a key system, facility, vendor, or person became unavailable?**

RISK 9 OF 10

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Recovery Risk



Having a backup is not the same as knowing it will work.

21

RISK 9 OF 10

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Recovery Risk

? WHY IT'S OVERLOOKED

Leaders often assume that paying for backups means systems and data can be restored when needed.

! BUSINESS IMPACT

- Recovery may take days instead of hours
- Missing or unusable data can extend downtime
- Long outages create financial loss and frustration

✓ WHAT GOOD LOOKS LIKE

- Backups tested through actual recovery
- Recovery times match business expectations
- Local and cloud procedures documented and practiced

LEADERSHIP QUESTION

Have we tested recovery, or do we simply assume it will work?

22

RISK 10 OF 10

Cybersecurity Risk



The absence of a problem is not proof of protection.

RISK 10 OF 10

Cybersecurity Risk

? WHY IT'S OVERLOOKED

The absence of a recent incident can create a false sense of security.

! BUSINESS IMPACT

- Financial loss from fraud, ransomware, and interruption
- Exposure of sensitive information
- Operational disruption and loss of customer trust

✓ WHAT GOOD LOOKS LIKE

- Core protections reviewed and updated regularly
- Security measured through assessments and testing
- Ability to detect, respond, and recover

LEADERSHIP QUESTION — **How do we know our protections are still effective today?**

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Technology should support where the business is going, not merely react to where it has been.

01 Ask better questions
Move beyond "Is it working?"

02 Build an intentional roadmap
Connect decisions to business goals

03 Review risk regularly
Conditions and threats keep changing

Every leader needs strategic technology guidance in their corner.

ctaccess

Thank you

Questions and conversation are welcome.

Scott Hirschfeld
President

scotth@ctaccess.com • 262-789-8210

3:40 – 4:40 p.m.

Hot Tax Practice, Procedure & Ethics Issues: What Practitioners Need to Know

Michael Goller, JD, *Shareholder, Reinhart Boemer Van Deuren s.c.*

HOT TAX PRACTICE, PROCEDURE AND ETHICS ISSUES FOR 2026

Michael G. Goller, Esq. | Reinhart Boerner Van Deuren s.c. | Milwaukee, Wisconsin | mgoller@reinhartlaw.com | 414-298-8336

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1

Michael G. Goller, Esq.

Michael Goller has more than three decades of experience assisting clients with federal and state tax controversy, tax litigation and tax planning. He is a shareholder in Reinhart's Tax and Corporate Law Practices. Michael represents corporations, partnerships, limited liability companies, family offices, closely held businesses, tax-exempt organizations and individuals.

He is a self-described "tax geek who litigates," pairing his outgoing personality with extensive detailed knowledge and a dedicated work ethic. He represents clients involved in complex disputes with the IRS, the U.S. Department of Justice and various other authorities and has an impressive track record of favorable settlements. His practice includes IRS examinations and appeals, federal refund litigation, partnership tax controversies, valuation disputes, estate and gift tax matters, employment tax controversies and challenges to Treasury regulations.

Michael has built a reputation as the "Velvet Hammer" of tax controversy practice—combining a collaborative and pragmatic approach with the experience and resolve necessary to litigate complex disputes. He believes the most effective advocates are both credible negotiators and formidable litigators. By approaching disputes professionally and constructively while remaining thoroughly prepared for administrative appeals, trial and appellate review, Michael is often able to achieve favorable resolutions without unnecessary conflict, yet he does not hesitate to pursue litigation when necessary to protect his clients' interests.

Michael also advises clients before disputes arise, including on federal tax planning, state and local tax matters, partnership tax issues, business transactions, Qualified Opportunity Funds and Qualified Opportunity Zone investments.

Michael is a longtime faculty member at the University of Wisconsin-Milwaukee's Lubar School of Business and teaches Law Practice and Procedure in the Graduate Tax Program.

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07 Refund Claim Traps

08 High-Net-Worth / Family Office Audits

09 Passive Loss & Research Credit

10 Passive Losses and the Real Estate Professional

11 Research Credit Issues

12 Employment Tax & ERC

13 IRS Practitioner Oversight Restructuring

14 Proposed Circular 230 Amendments

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3

01

IRS Enforcement Is Rebuilding—Selectively

Staffing, high-wealth coverage and the enforcement heat map

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4

THREE CENTRAL FINDINGS

Executive summary

TARGETED REBUILD
The IRS is attempting to rebuild targeted enforcement capacity.

EXPERIENCE GAP
Experienced personnel losses are more significant than raw hiring numbers suggest.

UNEQUAL EFFECTS
Consequences will differ across high-wealth individuals, partnerships and large corporations.

CENTRAL THESIS **Expect selective enforcement priorities to re-emerge before the IRS regains broad operational capacity.**

5

WHY REBUILDING WILL TAKE TIME

The experience gap

DEPARTURES
Experienced agents and managers leave

→

TRAINING
Specialized skills require time

→

SUPERVISION
New personnel add management demands

→

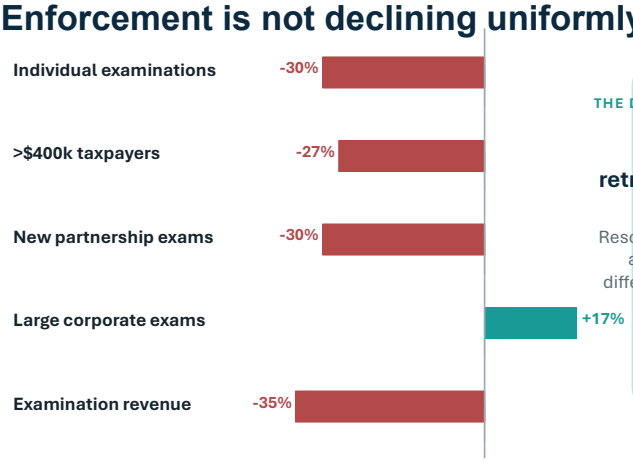
KNOWLEDGE
Institutional context is hard to replace

PRACTICAL CONSEQUENCE **Near-term audits may be uneven in quality, sophistication and timing.**

6

FY2025 REPORTED COMPARISONS

Enforcement is not declining uniformly



THE DISTINCTION

The IRS is not retreating uniformly.

Resources and examination activity are changing differently among taxpayer categories.

Figures require confirmation against underlying IRS/TIGTA tables before external distribution.

4

7

LOSSES BEFORE REBUILDING

The staffing problem

~28%

Net workforce reduction reported by TIGTA

~33%

Revenue-agent departures

WHY THIS MATTERS

- Experienced audit personnel cannot be replaced simply by hiring new employees.
- LB&I lost experienced management and technical personnel.
- Complex examinations require institutional knowledge and supervisory experience.

Headcount loss → Experience loss → **Longer rebuilding curve**

Source: TIGTA, Status of the IRS Workforce as of January 2026 (June 9, 2026).

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TARGETED ADDITIONS

The hiring announcement

~1,000

SB/SE and LB&I
Announced hiring across civil examination divisions

~175

Criminal Investigation
Additional hires for the IRS crime unit

Hiring announcements measure intent. Productive cases measure capacity.

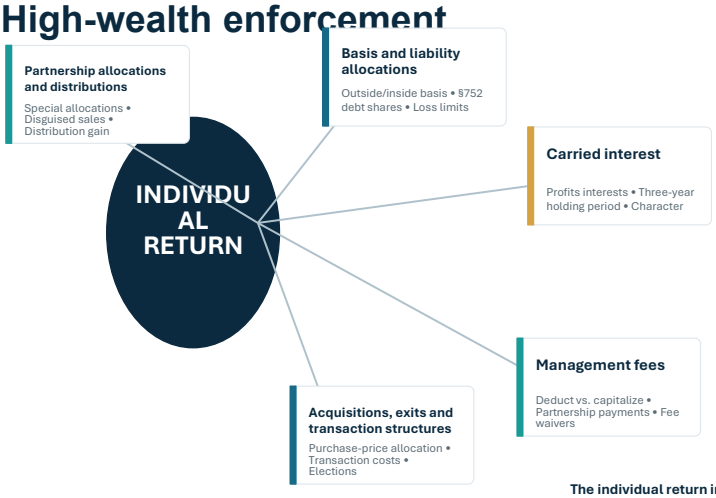
UNANSWERED QUESTIONS

- How will the 1,000 hires be allocated between LB&I and SB/SE?
- How many are experienced specialists?
- How quickly will they become productive?
- Is hiring replacing departures or expanding capacity?

Source: Bloomberg Tax, "After DOGE Cuts, IRS to Now Hire About 1,000 for Civil Divisions" (Oct. 23, 2026).

THE RETURN AS A GATEWAY

High-wealth enforcement



The individual return increasingly becomes the starting point for a broader examination of related entities and transactions.

IRS ENFORCEMENT • STRATEGIC BRIEFING

HIGH-WEALTH AUDITS

High-net-worth individual audit coverage is elevated, but the directional story is mixed

The audit rate for high-net-worth individuals, not partnerships, private-equity funds or corporations.

6.6%

TY2021 examination coverage

$10M+ total positive income; latest IRS Data Book year outside the limitations period.

8%

Treasury audit-rate objective

$10M+ individual returns; GAO reported IRS was on track for tax years 2018–2020.

DEC. 12, 2025

Global High Wealth IRM revised

Population identification, examination groups, program controls and effectiveness reporting updated. An IRM revision can serve as a "heat map" of where the IRS is building enforcement capability.

Targeted rebuilding is visible; the data do not yet establish a broad surge in completed high-wealth audits.

Interpretive caution: high-income audits often begin later in the limitations period, so early tax-year coverage figures can materially understate eventual audit activity.

Sources: IRS Data Book 2025, Compliance Presence; GAO-24-106112; IRS IRM 4.52.1 (Dec. 12, 2025).

HIGH-WEALTH INDIVIDUALS • RELATED ENTITIES

How a high-wealth examination can expand

01 **Partnership allocations and distributions**

02 **Basis and liability allocations**

03 **Carried interest**

04 **Management fees**

05 **Acquisitions, exits and transaction structures**

ILLUSTRATIVE PATH

Multiple related entities + **Multiple owners** + **Multiple returns**

ISSUES BEHIND THE TOUCHPOINTS

What the IRS is looking at

PARTNERSHIP & OWNER-LEVEL ISSUES

- **Partnership allocations and distributions**
  Whether allocations follow the agreement and economic arrangement, and whether distributions trigger basis, disguised-sale or gain-recognition issues.
- **Basis and liability allocations**
  Whether outside and inside basis, debt allocations and resulting loss or distribution treatment are correctly reported.
- **Passive loss rules**
  Whether the taxpayer materially participated, grouped activities properly and had sufficient passive income to use suspended losses.
- **Carried interest**
  Whether profits interests and related gains receive the claimed character and holding-period treatment.

FEES, ASSETS & TRANSACTIONS

- **Management fees**
  Whether fees are currently deductible, must be capitalized or should be treated as partnership payments; fee-waiver arrangements may receive added scrutiny.
- **Acquisitions, exits and structures**
  Purchase-price allocations, transaction costs, debt-versus-equity treatment, elections and related-party payments may be examined across multiple returns.
- **Cost-segregation issues**
  Whether property was placed in the correct asset class, assigned a supportable recovery period and eligible for accelerated depreciation.
- **Private-airplane issues**
  Whether business use is substantiated and whether personal use, fringe benefits, depreciation limits and expense allocations were handled correctly.

CORPORATE TAX ISSUES

- **Research credit cases**
  Whether activities satisfy the statutory tests and whether qualified wages, supplies and contract-research costs are adequately documented.
- **Compensation and benefits**
  Whether owner or executive compensation is reasonable and whether fringe benefits and personal expenses were properly included or disallowed.
- **Capitalization and deductions**
  Whether significant expenditures were deducted currently or should have been capitalized and recovered over time.
- **Related-party and entity issues**
  Whether intercompany charges, loans, distributions and entity-level reporting reflect the actual economics and applicable tax rules.

The issue set can expand quickly from one return to related owners, entities, assets and transactions.

IRS ENFORCEMENT • STRATEGIC BRIEFING

THE ENFORCEMENT HEAT MAP

The Big Four

HIGH SIGNAL

BBA PARTNERSHIPS

Field-exam procedures revised May 8, 2026
Planning • risk analysis • linkage • partner-level audits

HIGH SIGNAL

RESEARCH / §174

LB&I manual uses centralized risking
Issue selection • engineering and specialist referrals

HIGH SIGNAL

DEPRECIATION & CAPITALIZATION

Engineering manual refreshed Jan. 16, 2025
Cost segregation • bonus depreciation • capital vs. expense

HIGH SIGNAL

PRIVATE AIRCRAFT

Active LB&I Business Aircraft Campaign
Campaign announced Feb. 21, 2024 • analytics-based selection

The common thread: selection tools, specialist capacity and procedures that let one exam reach related entities and issues.

HIGH-SIGNAL DETAIL

Partnership examinations: the BBA manual was rebuilt

IRM 4.31.9 • revised May 8, 2026

WHAT CHANGED

Operational field-examination procedures

- Expanded and reorganized instructions for examination planning and risk analysis.
- Requires coordination and referral to a BBA point of contact in covered examinations.
- Addresses partnership-representative authority, election-out questions and administrative adjustment procedures.
- Provides procedures and examples for partnership-level and partner-level examinations, adjustment computation, push-out elections and case closing.

WHY IT MATTERS

A platform for multi-entity examinations

- The revision concerns how agents administer cases, not merely the substantive partnership tax rules.
- Procedures support movement from a partnership return to affected partners, related returns and resulting tax computations.
- The manual makes BBA process knowledge part of examination planning, development and closure.

Heat-map reading: HIGH — selection, linkage, procedural control and closing instructions were updated together.

Authority: IRS IRM 4.31.9, Centralized Partnership Audit Regime Field Examination Procedures (May 8, 2026).

HIGH-SIGNAL DETAIL

Research, §174 and engineering-supported issues

Centralized risk analysis plus specialist infrastructure

RESEARCH / §174

LB&I examination planning

- IRM 4.46.3 contains a dedicated section titled “Centralized Risking of Research Issues Under IRC 41 and IRC 174.”
- The planning manual also addresses issue selection, risk analysis, materiality, specialist referrals and issue-team staffing.
- This is a selection-and-planning signal: the IRS has a stated process for centrally evaluating research issues before and during examination.

ENGINEERING PROGRAM

IRM 4.48.1 • revised January 16, 2025

- Identifies research expenditures and research credits as engineering examination issues.
- Also identifies depreciation, cost segregation, bonus depreciation, capital-versus-expense and capital-versus-repair issues.
- Assigns program leadership responsibilities for referral criteria, national projects, issue trends, staffing and training.

Heat-map reading: HIGH — centralized risking can identify cases; engineering specialists can develop the selected issues.

Authorities: IRS IRM 4.46.3, Planning the Examination; IRS IRM 4.48.1, Overview of Engineering Program (Jan. 16, 2025).

HIGH-SIGNAL DETAIL

Private aircraft: campaign evidence is stronger than a manual revision

Campaign announced February 21, 2024

CAMPAIGN

IRS announcement and case selection

- The IRS announced plans to begin dozens of audits focused on business aircraft use by corporations, partnerships and high-income individual filers.
- The IRS stated that it would use advanced analytics and resources made available through Inflation Reduction Act funding.
- The announced concern was whether aircraft deductions were properly allocated between business use and personal use.

EXAMINATION ISSUES

What the campaign puts in play

- Business-purpose substantiation and allocation of use.
- Personal use and treatment of taxable fringe benefits.
- Depreciation, bonus depreciation and expense limitations.
- Entity-level deductions together with owner or executive consequences.

Heat-map reading: HIGH — an announced campaign with analytics-based selection is a direct enforcement signal.

Authority: IRS News Release IR-2024-46, "IRS begins audits of corporate jet usage" (Feb. 21, 2024).

MEDIUM-SIGNAL DETAIL

The supporting manuals show how an audit can expand

Recent revisions to projects, related returns, withholding and employment tax

JULY 23, 2025

IRM 4.17.4 — Compliance Initiative Projects

- Addresses market segments, supporting data, action plans, measures, national and cross-division projects, monitoring and reporting.

AUGUST 28, 2025

IRM 4.10.5 — Required Filing Checks

- Directs examination attention to prior and subsequent returns, related and spin-off returns, employment tax, information returns and foreign-entity filings.

SEPTEMBER 5, 2025

IRM 3.21.15 — Withholding on Foreign Partners

- Updates processing instructions for Forms 8804 and 8805 and section 1446 withholding, including language changes requested by LB&I.

AUGUST 26, 2025

IRM 4.23.3 — Employment Tax Examination Planning

- Covers examination sources, classification and selection, referrals, required filing checks, pre-contact analysis and examination scope.

Heat-map reading: MEDIUM — these revisions strengthen the machinery for targeted projects and related-return expansion.

Authorities: IRS IRM 4.17.4; IRM 4.10.5; IRM 3.21.15; IRM 4.23.3.

02

Ethics and Artificial Intelligence

Existing duties applied to new tools

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OPR ALERT 2026-19 | CONSEQUENCES

Improper AI Use Has Real Professional Consequences

OPR ALERT 2026-19

Courts have imposed sanctions for fake citations and other AI-generated hallucinations in legal filings.

CONSEQUENCES IDENTIFIED BY OPR

Financial sanctions; public censure; required ethics or professional-responsibility courses; default judgments; removal from representation; disciplinary referrals to state bar authorities; and reputational harm.

WHY THIS MATTERS IN TAX PRACTICE

The problem is not merely a bad citation. Inaccurate AI work can affect the client, the tax position, the administrative record, the tribunal, the responsible professional, and the firm. Human oversight must occur before delivery or filing.

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OPR ALERT 2026-19 | OVERVIEW

Introductory Guidelines for Responsible AI Use in Federal Tax Pra

OPR ALERT 2026-19

"Ethical obligations of competence, diligence, and confidentiality remain unchanged."

WHAT THE ALERT IDENTIFIES

AI can offer cost savings and rapid data analysis, but it also presents risks involving fabricated outputs, bias, lack of transparency, privacy, confidentiality, and data protection.

THE CENTRAL PRACTICE RULE

Treat AI-generated work as a draft. A qualified professional must review the facts, law, citations, calculations, assumptions, and client-data handling. Technology is a tool, not a substitute for professional judgment.

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OPR ALERT 2026-19 | FEES

AI-Assisted Fees: Efficiency Must Be Reflected Fairly

CIRCULAR 230 § 10.27(a)

"A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service."

WHAT OPR ALERT 2026-19 SAYS

"Cost savings should be passed on openly, with billing practices that reflect the efficiencies gained from the use of GAI." Practitioners should "disclose, in general or specific terms as needed, the AI activities performed," and "fairly credit to the client's account any cost reductions."

PRACTICE APPLICATION

- Bill only for work actually performed.
- Do not describe machine-generated effort as professional labor.
- Avoid double billing for AI-assisted tasks.
- Address AI use and vendor charges in the engagement terms.
- Disclose AI activities when general or specific disclosure is needed.
- Fairly credit cost reductions to the client.

Takeaway: AI may increase value, but the fee must remain reasonable, transparent, and consistent with the engagement and the work actually performed.

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AI ETHICS

The core rule: AI does not dilute professional responsibility

> *AI may improve efficiency, but it does not reduce the practitioner's duties of diligence, competence, confidentiality, reasonable written advice, billing fairness, and professional judgment.*
>
> Summary of OPR Alert 2026-19

- Use AI as an accelerator, not as a substitute for legal judgment.
- The practitioner owns the final factual, legal, and citation accuracy.

This is still your work.

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DUE DILIGENCE

Circular 230 § 10.22

> *A practitioner must exercise due diligence in preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to Internal Revenue Service matters; in determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and in determining the correctness of oral or written representations made by the practitioner to clients with reference to any matter administered by the Internal Revenue Service.*
>
> 31 C.F.R. § 10.22

- Verify the facts, citations, quotations, calculations, and assumptions.
- Correct known errors rather than allowing continued reliance on them.

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ABA MODEL RULE 1.4

Communication with the client

RULE / AUTHORITY

ABA Model Rule 1.4: "A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished" and "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

WHAT THE RULE REQUIRES

AI use can become a client-communication issue when the means materially affect confidentiality, cost, staffing, quality, or a client instruction. Formal Opinion 512 does not require disclosure of every ordinary technology use, but disclosure or consent may be necessary depending on the facts.

PRACTICE APPLICATION

Check engagement letters, outside-counsel guidelines, and client-specific restrictions before use. Explain material benefits and risks when AI use affects the agreed method of representation or requires disclosure of protected information.

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DUE DILIGENCE

What AI Can and Cannot Do

AI draft may supply

- Issue list
- Draft language
- Candidate authorities
- Preliminary calculations

Professional must confirm

- Primary authority
- Current validity
- Record facts
- Arithmetic and assumptions

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CIRCULAR 230 § 10.35

Competence in federal tax practice

RULE / AUTHORITY

Circular 230 § 10.35: "Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged."

WHAT THE RULE REQUIRES

Competence is substantive and technological. The practitioner must understand the tax issue and enough about the selected tool to recognize hallucinations, missing law, unreliable reasoning, and confidentiality risks.

PRACTICE APPLICATION

Match the reviewer to the risk. A junior user may create an outline, but a qualified practitioner should review a client conclusion, protest, opinion, return position, or filing. Consult another professional or decline the task when necessary.

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COMPETENCE

Circular 230 § 10.35

A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the appropriate level of knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.

31 C.F.R. § 10.35

- Know when the tool is likely to hallucinate or omit an exception.
- Understand enough about the system to supervise its use.

AI does not replace knowing the law.

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ABA MODEL RULE 1.1

Competence includes technological competence

RULE / AUTHORITY

ABA Model Rule 1.1: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

WHAT THE RULE REQUIRES

Formal Opinion 512 applies the ordinary competence duty to generative AI. A lawyer need not become a computer scientist, but must understand enough about the particular tool's capabilities and limitations to use it responsibly. Competence is continuing because tools, models, and risks change.

PRACTICE APPLICATION

Before use, identify the task, tool, risks, source limitations, and required level of human review. Do not permit an AI system to supply the final legal judgment. Verify cases, quotations, statutes, regulations, factual statements, and calculations.

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COMMENT [8] TO RULE 1.1

Keeping abreast of technology

RULE / AUTHORITY

Comment [8] to ABA Model Rule 1.1: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology."

WHAT THE RULE REQUIRES

The technology duty is not satisfied merely because a tool is approved or widely used. The user must understand the benefits and risks relevant to the specific assignment, including hallucinations, incomplete authority, bias, data handling, and unreliable explanations.

PRACTICE APPLICATION

Training should be role-specific and refreshed when a material feature, vendor term, or model changes. For high-risk work, require documented verification by a qualified lawyer who understands the governing substantive law.

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COMPETENCE

Technological competence is contextual

Competence includes the ability to identify limitations and compensate for them

1. Select the tool appropriate to the sensitivity and purpose of the task.
2. Understand what data leaves the firm environment and how it may be retained.
3. Recognize that confident language is not evidence of legal reliability.
4. Escalate unfamiliar issues to a qualified reviewer or independent source.
5. Decline or narrow the task when adequate verification is not possible, or present the limitation clearly.

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AICPA Rules

AICPA Code of Professional Conduct, Section 50, Article V, Due Care
"... Members should be diligent in discharging responsibilities to clients, employers and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough, and to observe applicable technical and ethical standards..."

MRPC -1.3

A lawyer shall act with reasonable diligence and promptness in representing a client

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CIRCULAR 230 § 10.37

Written advice and unreasonable reliance

RULE / AUTHORITY

Circular 230 § 10.37: Written advice must rest on reasonable factual and legal assumptions, consider relevant facts and circumstances, use reasonable efforts to ascertain the facts, relate law to facts, and avoid unreasonable reliance on representations, findings, or agreements.

WHAT THE RULE REQUIRES

Blind reliance on an output whose logic, sources, or assumptions are unknown conflicts with the structure of § 10.37. The practitioner must know the actual facts, identify the governing authority, and determine whether the result follows.

PRACTICE APPLICATION

Use AI to identify questions, organize records, or generate a draft. Then replace unverified propositions with primary authority, test assumptions, address inconsistencies, and document the professional analysis.

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WRITTEN ADVICE

Circular 230 § 10.37

> *The practitioner must base written advice on reasonable factual and legal assumptions; reasonably consider all relevant facts and circumstances; use reasonable efforts to identify and ascertain relevant facts; not rely on unreasonable representations; and relate applicable law and authorities to the facts.*
>
> 31 C.F.R. § 10.37

- AI output is not authority. You must give the AI the controlling facts before its work can even be evaluated.
- Opaque sourcing increases, rather than decreases, the need for independent review.

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Requirements for Written Tax Advice: § 10.37(a)

The Practitioner must

- Base written advice on reasonable factual and legal assumption
- Including assumptions as to future events
- Reasonably consider all relevant facts and circumstances the practitioner knows or reasonably should know
- Use reasonable efforts to identify and ascertain the facts relevant to written advice on each federal tax matter

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Requirements for Written Tax Advice: § 10.37(a)

- Not rely upon representations, statements, findings or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance upon them would be unreasonable
- Relate applicable law and authorities to the facts; and not, in evaluating a federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit
- Further, reliance upon a representation, statement, finding or agreement is specifically unreasonable if the practitioner knows or reasonably should know that one or more representations or assumptions on which any representation is based is incorrect, incomplete or inconsistent

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Reliance on Others Section 10.37(b)

- The practitioner may only rely on the advice of another person if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances
- Reliance is specifically not reasonable when
- The practitioner knows or reasonably should know that the opinion of the other person should not be relied upon;
- The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or
- The practitioner knows or reasonably should know that the other person has a conflict of interest in violation with Circular 230
- e.g., the conflict has not been properly waived

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WRITTEN ADVICE

The AI Review Checklist Before Delivery of Your Work Product

Use this checklist for IRS submissions, opinions, memoranda, client emails, research summaries, calculations, and any other AI-assisted professional work product.

1. Facts: compare the draft with source documents and the client record.
2. Law: read every cited statute, regulation, ruling, and case.
3. Quotations: inspect the original and confirm context.
4. Calculations: recompute independently and test assumptions.
5. Counterarguments: identify adverse authority and missing exceptions.
6. Scope: state limitations, uncertainties, and unresolved factual questions. Common sense: ask, “Does this make sense?”

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Firm Management Procedures to Ensure Circular 230 Compliance Section 10.36

- The IRS appears to be attempting to create a “culture of compliance”
- Practitioners in a position of authority must do more than ensure their own compliance with Circular 230
- Supervising practitioners must ensure that all individuals they supervise comply with Circular 230 as it pertains to the preparation of returns, claims for refund or other documents submitted to the IRS

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CIRCULAR 230 § 10.36

Firm compliance procedures

RULE / AUTHORITY

Circular 230 § 10.36: A person with principal authority and responsibility for overseeing a firm's practice must take reasonable steps to ensure that adequate Circular 230 compliance procedures are in effect and properly followed.

WHAT THE RULE REQUIRES

AI governance should be integrated into Circular 230 procedures. A firm can face supervisory risk when it lacks adequate controls, ignores patterns of noncompliance, or fails to take prompt corrective action.

PRACTICE APPLICATION

Assign ownership. Maintain approved-tool lists, training records, client restrictions, verification requirements, vendor review, incident protocols, and periodic testing. Correct repeated misuse promptly.

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FIRM PROCEDURES

Circular 230 § 10.36

- Written policy alone is not enough; implementation and correction matter.
- Supervision should scale with risk, sensitivity, and reviewer experience.

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Section 10.36

- A practitioner responsible for implementation of Circular 230 compliance procedures will be subject to disciplinary action if:
- 1(a) The responsible practitioner, through willfulness, recklessness or gross incompetence, does not take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230; and
- 1(b) One or more individuals who are members of, associated with, or employed by the firm are, or have engaged in a practice in connection with their practice with the firm of failing to comply with Circular 230;

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Section 10.36

- 2(a) The responsible practitioner, through willfulness, recklessness or gross incompetence, does not take reasonable steps to ensure that firm procedures in effect are properly followed; and
- 2(b) One or more individuals who are members of, associate with, or are employed by the firm or have engaged in a pattern or practice, in connection with their practice with the firm of failing to comply with Circular 230; or

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Section 10.36

- 3(a)The responsible practitioner knows or should know that one or more individuals who are a member of, associated with, or employed by the firm are, or have engaged in a pattern or practice in connection with their practice with the firm that does not comply with Circular 230, as applicable; and
- 3(b)The responsible practitioner, through willfulness, recklessness or gross incompetence, fails to take prompt action to correct the noncompliance.

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ABA MODEL RULES 5.1 AND 5.3

Supervision of lawyers, staff, vendors, and systems

RULE / AUTHORITY

ABA Model Rules 5.1 and 5.3: Partners and supervising lawyers must make reasonable efforts to ensure that lawyers and nonlawyer assistance are compatible with the lawyer's professional obligations.

WHAT THE RULE REQUIRES

AI use is a management issue, not merely an individual-user issue. A firm must establish expectations, train users, select and monitor vendors, define review requirements, and correct known patterns of misuse. Delegation never eliminates the responsible lawyer's duty.

PRACTICE APPLICATION

Adopt written controls covering approved tools, restricted tasks, client-data rules, audit logs, review levels, vendor diligence, incident response, and escalation. Supervisors should verify actual compliance rather than relying only on a policy document.

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Standard of Review: Have I Complied with the Rule?

- In evaluating whether a practitioner's written tax advice complies with Section 10.37, the IRS will apply a "reasonable practitioner" standard, considering all facts and circumstances, including, but not limited to the scope of the engagement and the type and specificity of the advice sought by the client

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Standard of Review: Have I Complied with the Rule?

- In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner in promoting, marketing or recommending a transaction, a significant purpose of which is the avoidance or evasion of tax, the IRS will apply an elevated "reasonable practitioner" standard. Emphasis will be given to the additional risk, caused by the practitioner's lack of knowledge of the specific taxpayer's particular circumstances (i.e., when tax advice is going to be used to promote a transaction to a third party, the IRS will apply an elevated standard of care).

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FIRM PROCEDURES

Minimum elements of an AI-use policy

The policy should create an auditable, repeatable review process that identifies who may use AI, what information may be entered, who reviews the output, and how corrections are documented.

1. Approved tools and prohibited uses: identify the tools that may be used and the assignments for which they may be used.
2. Client-data controls: determine what happens to the data, where it is retained, and who can access it.
3. Human review and citation verification: the responsible professional must personally review and verify the work.
4. Training: make sure every user knows how to use the tool and understands its limitations.
5. Vendor diligence and retention: confirm that the product and its data practices are safe.
6. Periodic audits and remediation: trust but verify both the AI system and the people using it.

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IRC §§ 6713 AND 7216

Tax-return information and AI platforms

RULE / AUTHORITY

IRC §§ 6713 and 7216: Civil and criminal consequences may apply to unauthorized use or disclosure of tax-return information. The term reaches information furnished in any form or manner for, or in connection with, preparing a taxpayer's return.

WHAT THE RULE REQUIRES

A prompt can disclose return information without attaching a return. Identifiers, business facts, ownership, income, deductions, transaction terms, and draft positions may be protected even when presented as isolated facts.

PRACTICE APPLICATION

Use only systems authorized for the information involved. Follow consent and regulatory requirements. Apply data minimization, access controls, retention controls, and deletion procedures. Do not assume a consumer AI account is confidential.

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CONFIDENTIALITY

We Must Protect Tax Return Information — IRC §§ 7216 and 6713

> *Tax return information includes any information, including a taxpayer's name, address, or identifying number, furnished in any form or manner for, or in connection with, the preparation of a tax return. The definition reaches information furnished in all manner and form.*
>
> Treas. Reg. § 301.7216-1(b)(3)(i)

- Do not upload sensitive data to public or unapproved systems.
- Use secure, enterprise-approved tools and the minimum data necessary.

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CONFIDENTIALITY

Data minimization before prompting, including redaction

Avoid

- Names and TINs
- Unredacted returns
- Bank and payroll details
- Privileged strategy

Prefer

- Redacted facts
- Synthetic examples
- Need-to-know excerpts
- Approved enterprise workspace

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FEES

Circular 230 § 10.27(a)

> *A practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service.*
>
> 31 C.F.R. § 10.27(a)

- Record the professional time actually devoted to the matter.
- Do not represent machine-generated effort as lawyer or accountant labor.
- Review your engagement letters.

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ABA MODEL RULE 1.5

Fees and AI efficiency

RULE / AUTHORITY

ABA Model Rule 1.5: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

WHAT THE RULE REQUIRES

AI does not convert work that took minutes into hours of billable labor. The reasonableness of a fee depends on the engagement and Rule 1.5 factors, not simply the historical time required to perform the task manually. A fixed or value-based fee must still be reasonable.

PRACTICE APPLICATION

Time entries must describe work actually performed. Do not double bill machine-assisted work. Treat vendor charges consistently with the engagement terms. Professional review, revision, and judgment remain compensable when actually provided.

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FEES

AI-assisted billing questions

The ethical answer depends on the engagement agreement, the work actually performed, the professional judgment supplied, and whether the billing description fairly communicates the basis for the charge.

1. What professional judgment and review did the matter require?
2. Was the fee based on value, a fixed arrangement, or actual time?
3. Does the narrative accurately describe the work performed?
4. Are AI efficiencies being handled consistently under the engagement terms?
5. Would the client understand the basis for the charge if asked?

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RISK CONTROL

High-risk and lower-risk uses

Higher risk

- Filing-ready legal analysis
- Client-specific tax advice
- Uploading return data
- Unverified quotations

Lower risk with review

- Outlines and issue lists
- Plain-language rewrites
- Checklists
- Formatting and organization

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CONTROVERSY PRACTICE

AI Safeguards for IRS- and DOR-Facing Work

Credibility with Exam, Appeals, and the courts is difficult to rebuild once lost

1. Preserve the chain from record facts to each factual assertion.
2. Check every citation and pin cite against the underlying authority.
3. Do not use fabricated or generalized quotations.
4. Reconcile calculations to returns, transcripts, and workpapers.
5. Have a qualified professional sign off before submission.
6. Retain an appropriate record of review and corrections.

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AI ETHICS

Practical bottom line

The governing duties are familiar; the failure modes are new

1. Treat output as a draft.
2. Protect taxpayer data.
3. Verify every material proposition.
4. Apply professional judgment.
5. Supervise people and systems.
6. Document the process.

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ABA MODEL RULE 1.6

Confidentiality of information

RULE / AUTHORITY

ABA Model Rule 1.6: "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent," subject to stated exceptions. A lawyer must also make reasonable efforts to prevent inadvertent or unauthorized disclosure or access.

WHAT THE RULE REQUIRES

Prompts and uploaded files may reveal far more than names. Facts, transaction structures, draft arguments, return information, and strategy can identify a client or disclose protected information. The relevant question is what the vendor receives, stores, uses, or exposes.

PRACTICE APPLICATION

Use approved systems. Review terms on retention, model training, human review, location, access controls, and deletion. Minimize the data entered. Redact when possible. Obtain informed consent if disclosure to the system is not otherwise authorized.

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ABA MODEL RULE 3.1

Meritorious claims and contentions

RULE / AUTHORITY

ABA Model Rule 3.1: A lawyer shall not bring or defend a proceeding, or assert or controvert an issue, unless there is a basis in law and fact that is not frivolous, including a good-faith argument for extension, modification, or reversal of existing law.

WHAT THE RULE REQUIRES

An AI-generated theory is not a legal basis. The lawyer must determine whether supporting authority exists, whether contrary authority has been addressed, whether factual predicates are supported, and whether the argument is properly characterized as existing law or proposed development.

PRACTICE APPLICATION

For every material contention, preserve the primary authority reviewed, factual support, and analysis. Do not rely on summaries that cannot be traced to a citable source. Clearly identify novel arguments as such.

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ABA MODEL RULE 3.3

Candor toward the tribunal

RULE / AUTHORITY

ABA Model Rule 3.3: A lawyer shall not knowingly make a false statement of fact or law to a tribunal and must correct a material false statement previously made.

WHAT THE RULE REQUIRES

The duty extends beyond the moment of filing. If a lawyer learns that an AI-assisted submission contains a nonexistent case, fabricated quotation, false factual statement, or materially misleading description, continued advocacy can aggravate the problem.

PRACTICE APPLICATION

Stop relying on the error, determine its effect, notify the responsible lawyer, and make the correction required by the governing rules and court orders. Preserve the record of discovery and remediation.

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FEDERAL RULE OF CIVIL PROCEDURE 11

The signer certifies reasonable inquiry

RULE / AUTHORITY

Federal Rule of Civil Procedure 11: By presenting a paper to the court, an attorney certifies that, after an inquiry reasonable under the circumstances, factual contentions have evidentiary support and legal contentions are warranted by existing law or a nonfrivolous argument for changing it.

WHAT THE RULE REQUIRES

Rule 11 responsibility is personal to the signer. AI assistance does not reduce the required inquiry. A polished draft, a quoted "case," or a functioning hyperlink does not establish authenticity or accuracy.

PRACTICE APPLICATION

Read the authority. Confirm the docket, court, date, treatment, quotation, and proposition. Confirm facts against evidence. Check the current local rules, standing orders, and any required AI disclosure or certification.

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MATA V. AVIANCA

The gatekeeping role belongs to the lawyer

RULE / AUTHORITY

Mata v. Avianca, 678 F. Supp. 3d 443 (S.D.N.Y. 2023): "Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings."

WHAT THE RULE REQUIRES

The sanctionable failure was not simply opening an AI tool. The attorneys submitted nonexistent opinions containing fabricated quotations and citations, then continued to stand by the material after its authenticity was questioned.

PRACTICE APPLICATION

The practical lesson is verification plus correction. A lawyer should be able to retrieve every cited authority from an authoritative source and should promptly correct an AI-related error rather than defend an output that cannot be substantiated.

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S.D. TEXAS GENERAL ORDER 2025-04

Responsibility does not shift to the tool

RULE / AUTHORITY

S.D. Texas General Order 2025-04: "Any attorney or self-represented litigant who signs a pleading, written motion, or other paper submitted to the Court will be held responsible for the contents of that filing under Rule 11, regardless of whether generative artificial intelligence drafted any portion of that filing."

WHAT THE RULE REQUIRES

The order warns against filing AI-drafted material without checking accuracy and states that AI should never replace independent legal judgment. The order treats AI as a method of preparation, not as a defense to an inaccurate filing.

PRACTICE APPLICATION

Before filing in any tribunal, check the tribunal's current AI rules and the assigned judge's standing orders. Build the certification or disclosure requirement into the filing checklist.

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CIRCULAR 230 § 10.33

Best practices remain useful even when aspirational

RULE / AUTHORITY

Circular 230 § 10.33: Best practices include clearly communicating the engagement, establishing relevant facts, evaluating the reasonableness of assumptions, relating applicable law to relevant facts, and advising the client about conclusions and consequences.

WHAT THE RULE REQUIRES

Section 10.33 is framed as best practice rather than an independent sanction rule, but its structure provides a practical workflow for AI-assisted tax work. It emphasizes facts, assumptions, law, consequences, and client communication.

PRACTICE APPLICATION

Use a written review form that records the assignment, source record, assumptions, authorities checked, calculations recomputed, reviewer, client communication, and final conclusion.

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INTEGRATED STANDARD

One professional obligation across three regimes

RULE / AUTHORITY

The Model Rules, Circular 230, and court rules converge on a common principle: AI may assist the work, but the professional must protect information, exercise independent judgment, verify accuracy, supervise the process, communicate when necessary, and charge fairly.

WHAT THE RULE REQUIRES

The exact rule depends on the forum and role. A tax lawyer may simultaneously be governed by state professional rules, Circular 230, statutes protecting tax-return information, client terms, and a court's local AI order.

PRACTICE APPLICATION

At intake, identify every governing regime. At completion, require a single documented review covering authority, facts, calculations, confidentiality, client instructions, court requirements, billing, and final professional approval.

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TAKE-HOME CHECKLIST

The file should show the professional owned the result

RULE / AUTHORITY

For each AI-assisted matter, the file should identify the approved tool used, information provided to it, authorities and facts independently checked, calculations recomputed, client or court restrictions considered, reviewer, corrections made, and final approval.

WHAT THE RULE REQUIRES

This documentation is not intended to create unnecessary work. It is the record that the professional treated AI as a draft and performed the same competent, diligent, confidential, and candid review required for any other work product.

PRACTICE APPLICATION

Use a short review certificate for higher-risk work: IRS submissions, opinions, protests, briefs, valuation analyses, return positions, refund claims, penalty defenses, and advice dependent on procedural deadlines.

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03

Other Hot Ethical Issues

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Use of Estimates

AICPA Statement on Standards for Tax Services No. 4, Use of Estimates

Unless prohibited by statute or by some other rule, a CPA may use the taxpayer's estimates in the preparation of a tax return if it is not practical to obtain exact data and if the CPA determines that the estimates are reasonable based on the facts and circumstances known to the CPA

The taxpayer's estimate should be presented in a manner that does not imply greater accuracy than exists

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Am I Bound by the Prior Audit or Court Case?

AICPA Statement on Standards for Tax Services No. 5, Departure from a Position Previously Concluded in an Administrative Proceeding or Court Decision

A conclusion in an audit or court proceeding does not restrict a CPA from recommending a different position in a later year unless a taxpayer is bound to a specified treatment by a formal closing agreement or some other method

However, the CPA must still satisfy the normal standards for preparing a tax return. See SSTS No. 1, Tax Return Positions.

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Am I Bound by the Audit or Prior Court Case?

- Thus generally, the result of the audit or court case will indicate how to treat the item in a later year
- There could be exceptions, for example
- If the prior decision was due to nothing more than a lack of documentation;
- If the taxpayer yielded in an administrative proceeding for settlement purposes, but has a legitimate basis for not adopting the position; or,
- New court decisions, rulings or other authorities have been promulgated since the prior proceeding.

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Preparer Penalty Standards Under I.R.C. § 6694(a)

1. The percentage of comfort is perhaps 5% or less
2. Reasonable basis is defined in Section 1.6662-3(b)(3); the percentage of comfort is perhaps 20%
3. Use Form 8275 or 8275R, or disclose pursuant to annual revenue procedure (e.g., Rev. Proc. 2015-16)
4. “Substantial authority” is defined in Section 1.6662-4(d). It is a comfort level of perhaps 40% or more
5. A tax shelter is an arrangement that has a significant purpose of avoidance or evasion of income tax. Section 6662(d)(2)(C)(iii). See Notice 2009-5 for how, in limited situations, to lower the standard to substantial authority for a tax shelter (basically educate the taxpayer about penalty exposure and document this fact)

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Conflicts of Interest Section 10.29

A major cause of malpractice claims for Tax Practitioners

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A Conflict of Interest Exists If

The representation of one client will be directly adverse to another client; or
There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities to another client, a former client or third person, or by the personal interest of the practitioner

Comment: Virtually same Rule as MRPC 1.7

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Conflict Waivers

The client must provide a written consent waiving the conflict within 30 days of giving verbal consent

The written waiver must be retained for at least three years after the conclusion of the representation of any affected client

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Obtain a Waiver

Where a conflict exists, a practitioner may still handle the matter if the practitioner reasonably believes that he/she will be able to provide competent and diligent representation to each affected client, the representation will not otherwise violate the law and each affected client waives the conflict in an informed consent at the time the conflict is discovered by the practitioner

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More Conflict Traps for the Unwary

The Practitioner's Own Interest

- A common conflict, which is often overlooked, is the situation where a practitioner prepares a tax return, either as a signing or nonsigning preparer, and then handles the subsequent tax audit or appeal
- In this situation, there may be a conflict if the practitioner has a personal interest that conflicts with the client's interest
- For example, if the IRS asserts an accuracy-related penalty, will the practitioner be hesitant to argue that the penalty should not apply because of the taxpayer's good-faith reliance on the practitioner's tax advice?
- Comment: The estate and gift tax valuation penalties are mathematical triggers. Thus, if value is too low the trigger (and thus a possible conflict) could arise without much warning

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More Conflict Traps for the Unwary (cont.)

Representing Both Spouses

Another common conflict exists when the practitioner represents both a husband and wife, and the two spouses' interests become adverse

In such a situation, the practitioner may be unable to represent either spouse

Example — clients divorce and there is a pending Tax Court case. Does one spouse have a claim for relief under Section 6015 (i.e., innocent spouse and similar relief)?

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Who is My Client?

- Who is my client
- Partnership matters under the Bipartisan Budget Act (Do I represent the partnership, partners, or both?)
- Estate Planning Issues
- Related Issues
- What is my duty to my client?
- What are my possible conflicts of interest?
- Multiple Client Issues
- Representing spouses
- Representing a closely-held business
- Representing fiduciaries (i.e., the trustee or personal representative)

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Prompt Disposition of Matters and Responses to Requests for Information §§10.20 and 10.23 (cont.)

- Where the documents or information requested by the IRS are not in the possession of the practitioner or client, the practitioner must promptly provide the IRS employee seeking the information with any information the practitioner has about who has possession or control of the requested information

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Ethical Obligation to Talk About Penalty Avoidance

- Under IRS Circular 230, practitioners must advise the client of any penalties that are reasonable reasonably likely to apply, and the practitioner must discuss the possibility of penalty avoidance via disclosure. §10.34(c)
- Document discussion to avoid penalty under 6662 & 6694

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Responding to Information Requests – Ethical Issues

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Due Diligence – Ethical Issues

- Due Care – AICPA Code of Professional Conduct, Section 50 Article V.
- Model Rule of Prof. Res. 1.3
- Wis. SCR 20:1.3
- Missouri Supreme Court Rule (4-1.3)

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Circular 230 – Prompt Disposition of Matters and Responses to Requests for Information §10.20 and §10.23

- If the IRS makes proper request for records or information, a practitioner must promptly respond to the request unless the practitioner reasonably has the good-faith belief that the information is privileged
- A practitioner may not unreasonably delay the prompt disposition of any matter before the IRS

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Responding to IRS Information Requests

AUDIT

Prompt Response

Respond to proper requests unless there is a reasonable good-faith privilege position.

Possession & Control

Make reasonable inquiry of the client concerning who has possession or control of requested information.

Build the Record

Treat IDR responses as part of the later Appeals and litigation record. Track facts, documents and unresolved requests.

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Getting to and Working in Appeals

APPEALS

30-day letter and protest strategy: decide how much factual and legal development belongs in the protest.

Consider an FOIA request and the examination team's administrative record.

Focus on hazards of litigation, but recognize limits on Appeals authority for certain regulation challenges.

If the process stalls, evaluate escalation paths without weakening the factual record.

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Burden of Proof: Build It During the Audit

EVIDENCE

§ 7491	A factual burden can shift in qualifying court proceedings when the taxpayer introduces credible evidence and satisfies statutory requirements.
Audit Conduct	Substantiation, cooperation and exhaustion of administrative remedies matter before trial.
Evidence Discipline	Contemporaneous documents, credible testimony and a clean production record improve the litigation posture.

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Switching the Burden of Proof to the IRS

- Burden of proof can be important in valuation cases
- This is especially so if the IRS does not obtain a good valuation report

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Make Sure During the Audit That the Burden of Proof Will Switch at Trial

- Burden to IRS
  - In most civil controversies, a rebuttable presumption existed that the IRS's determination of tax liability is correct
    - *i.e.,*the taxpayer has the burden of proving the IRS is wrong
- Section 7491 switched the burden to the government in any non-criminal court proceedings, regarding a factual issue, if the taxpayer introduces credible evidence, which is relevant to determination of its liability

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Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- Qualification
  - Code section 7491, which switches the burden of proof to the IRS, applies only to litigation in the courts between the taxpayer and the IRS
  - In order to obtain a shift in the burden of proof, the taxpayer must first comply with all requirements of the code section
- Comply with substantiation requirements contained in the Code and Regulations;
- Cooperate fully with the IRS;
- Exhaust all administrative remedies available to the taxpayer, such as going to the IRS Appeals office; and
- Produce credible evidence at trial.

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Make Sure During the Audit That the Burden of Proof Will Switch at Trial (cont.)

- The requirements to prove credible evidence means that the burden technically starts out on the taxpayer, but shifts to the government unless the taxpayer produces evidence that would enable the court to find in the favor of the taxpayer, absent any contrary evidence being produced by the IRS and ignoring the judicial presumption of IRS correctness
- Finally, the shift in the burden of proof applies to all income, gift, estate, generation-skipping, taxes and all penalties in addition to tax
  - However, it does not apply to corporations, partnerships, or trusts with the net worth exceeding $7 million (book value)
  - **Is some planning possible**

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Privilege and the Reasonable-Cause Tradeoff

PRIVILEGE

Attorney-client privilege, work product and § 7525 can apply differently in tax matters.	A Kovel arrangement is aimed at facilitating lawyer-client legal communication through an agent.
Reliance-on-adviser defenses can put otherwise privileged advice at issue.	Decide early whether the likely penalty defense is worth the potential privilege consequences.

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2026 IRS Landscape & Procedure – Not A Lot of Smiling Faces

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IRS Landscape: What Matters in Practice

IRS LANDSCAPE

Operating Environment	Staffing and organizational changes affect the audit environment. Expect uneven experience levels and practical pressure on case management. Tell your story in writing.

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Regulations After Loper Bright

REFERENCE

Overview

- *Chevron*is dead, but*Skidmore*lives
- Chevron USA Inc. v. National Reserve Defense Counsel, 467 U.S. 837 (1984)– two famous factors used to make a Reg. legally binding
  - Regulation must be consistent with the plain meaning of the statute
  - Regulation is not an unreasonable interpretation of the statute

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Loper Bright: The New Starting Point

LOPER BRIGHT

Independent judicial judgment Prior law:*Chevron*	Courts decide the best reading of the statute rather than deferring merely because the statute is ambiguous.
Skidmore still matters	Agency reasoning may persuade to the extent it is thorough, consistent and well reasoned.Skidmore v. Swift (0323 U.S. 134 (1944)Skidmore Deference- courts will defer to an agency depending on the thoroughness of its consideration, validity of its reasoning, consistency with other pronouncements and all of those factors which give it a power to persuade.
Delegated authority remains critical	The central question becomes whether Congress delegated authority and whether the agency stayed within its boundaries.

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Post-Loper Practice Consequences

LOPER BRIGHT

Rule Challenge	Identify statutory text, delegation, procedural pedigree and the claimed regulatory gap.
Appeals Limitation	Appeals regulations restrict consideration of regulation-invalidity challenges absent qualifying final judicial authority. Section 7803(e) – Codified the Internal Revenue Service Independent Office ofAppeals § 7803(e)(1). Purpose is to resolve cases, without litigation on a basis which is "fair and impartial." §7803(e)(3)(A)
Ethics Overlay	Coordinate substantive challenge with disclosure, preparer-penalty and reasonable-cause analysis. Form 8275 v. Form 8275-R Disclosure Issues Circular 230, AICPA Rules, State Bar Rules Practical Realities- hard to challenge a regulation on IRS guidance

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Audit, Appeals & Evidence

REFERENCE

Practical Take Aways -

What is the IRS looking at?
IRS training materials

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IRS Audit Issues

AUDIT PRIORITIES

Capitalization & High Wealth

Expect detailed factual testing of repairs versus capital items, estate and high-wealth valuations, ownership, transfers and deductions.

Research Credit & Aircraft

Both areas demand granular, contemporaneous evidence tied to the claimed tax treatment.

Compensation

Nonqualified deferred compensation examinations focus on income timing, employer deduction and employment-tax treatment.

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IRS Audit Issues

IRS TRAINING

Business Aircraft

Qualified business use; personal use; fringe-benefit inclusion; § 280F; flight and passenger documentation.

NQDC / § 409A

Income-inclusion timing; employer deduction; employment-tax timing; plan, election and payment records.

Research Credit

Business components; people and projects; QRE support; four-part-test evidence.

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Airplane Cases

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What is the Tax Planning Technique?

- Sutherland Lumber – Southwest Inc. v. Comm'r, 255 F.3d 495 (8th Cir. 2001)
- SIFL planning

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Airplane Cases

- Need 51% business use to take accelerated depreciation. The first 25% of business use cannot be a rental to a related party or personal use treated as a fringe benefit.
- Depreciation and the Section 280F trap
- Entertainment Facility trap
  - No deduction is allowed for an entertainment facility. §274(a)(1)(B). Exception Transportation entertainment facilities are deductible if the facility is used in pursuit of a trade or business. §1.274-2(b)(1)(iii)(1); TAM9608004. (Planning – Document business need for the plane)
  - Take the time to do good flight logs
  - Watch the 280F depreciation recapture
  - FAA rules require a dry lease. Make sure you do not violate Section 280F

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Airplane Cases

- IRS Activity
  - IRS Notice – IR – 2024-46 (2/21/24) – IRS Notice of more audits
  - LB&I "Campaign" Issue
  - Checklist
    - Flight Logs
    - Business Purposes – Document (162 + 183)
    - 280F
    - PE v. PNE Flights – Document
    - Entity – Partnership or Corporation
    - Dry Lease
    - FAA – Part 91 or 135
    - State Tax Issues – Fly Away States

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Airplane Cases

- Use a Partnership or Corporate structure
- SIFL or §274-10(e)
- Personal Entertainment v. Non-Personal Entertainment
- SIFL is much more favorable than §274-10(e)
- Avoid Schedule C Structure – CCA 202117012 (4/30/21)
  - IRS: Can not pay a fringe benefit to a sole proprietor so income is not SIFL income. Simply disallow all personal expenses. Unclear how to measure expenses.

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Airplane Cases

- Section 280F
  - Leasing and Fringe Benefit Traps
  - Here's a new one – a single member LLC is not a single member LLC
  - New IRS training materials issued November, 2024
- Section 183 – Hobby Loss
  - Business Plan
  - Factors §1.183-2(b) – SeeSchwarz v. Comm'r, Tax CourtDkt. 12347-20 (case pending)

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Family Office Planning

- LenderMgmtLLC V. Comm'r, T.C. Memo 2017-25
- Family office takes a profits interests in investments and is treated as a trade or business
- Has to be a real trade or business – 162 and 183 issues
- Pending issues
  - Planes
  - Cost Seg
  - Real Estate Professional
  - Not For Profit
  - Professional Gambler

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Family Office Planning

- Section 183 concerns
  - Section 183(a) – Disallows expenses of not-for-profit activities
  - Section 183 on its face applies to "an individual on an S- corporation... " Section 183(a) applies to partnership and trusts as well.
    - Note Section 183 creates presumptions
  - Section 183 does not apply to C-corporations. However 162 still applies to a C-corporation and IRS regulations state that "no inference can be drawn from Section 183 and the regulations thereunder that any activity of a [C] corporation... is or is not a business or engaged in for profit." Treas. Reg. 1.183-7(a)
  - Sorry – Slapping a hobby into a C-corporation does not work (at least not well)

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Cost Segregation Issues

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Cost Segregation Ethical Concerns

- Watch the numbers on audit.
- IRS cannot disallow the depreciation and disallow the same expense as passive
- Recalculate and check any revised gain
- Need a good cost segregation study – Engineers are not tax experts
- How to correctly retain an expert
- May need credible testimony about holding property until death
- Diligence – Cir. 230 § 10.22
- Reliance on written advice – Cir. 230 § 10.22, 10.37(b)
- Document any purchase price allocation
- Penalty issues
- Educate client about risks

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Cost Segregation (cont.)

- New Section 168(n) – 100% depreciation for Qualified Production Property
- For a mixed use facility the Taxpayer will need to allocate to production and non-production components
  - Comment: What do “manufacturing” and “production” mean? Not defined.

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Cost Segregation: Planning and Audit Risk

COST SEGREGATION

Planning Goal

Identify shorter-life building components for accelerated cost recovery and potential bonus depreciation.

Audit Focus

Expect scrutiny of engineering support, classifications, purchase-price allocations and transactions surrounding exchanges.

Ethical Overlay

Check revised computations, reliance on engineers, written advice, penalty exposure and client risk communication.

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Change-in-Accounting-Method Trap

COST SEGREGATION

Changes in depreciation recovery period or convention can implicate method-of-accounting rules.	Analyze the lifetime-income concept rather than assuming every reclassification is merely a timing item.
Consider the effect of exchanges, basis step-up, later dispositions and other provisions before taking a position.	Tell the client at the planning stage if a Form 3115 or § 481 adjustment issue may need analysis.

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Valuation & Appraisal Issues

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Valuation Checklist

What does the client want:
- High value
- Low value

- The Cover Letter- Summary
- Who is the retaining party and other intended users?
- Use the Correct Definition of Fair Market Value ("FMV"), FMV for a gift, Treas. Reg. Section 25.2512-1 defines fair market value as
  - [T]he price at which property would change hands between a willing buyer and a willing seller, Neither being under any compulsion to buy or sell and both having reasonable knowledge of the Relevant facts

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Valuation Checklist (cont.)

- The "as of" or date
- Purpose of the valuation and intended use (*e.g.*estate and gift tax purposes)
- Type of asset and interest being valued (*i.e.*a minority interest...)
- Control Rights – if any
- Access to Liquidity
- The Scope of Work
- Information Considered
- Methodologies Utilized
- Fair Market Value Conclusion

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Valuation Checklist (cont.)

- The Report – Body
- Standard of value – Define FMV again
- Purpose of the valuation
- What is being valued?
- Prior transactions, if any
- Rights, preferences, and privileges of interest being valued
- Economic overview/ market conditions
- Company specific information
- Methodologies used to determine FMV (Holding Company v. Active Business)

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Valuation Checklist (cont.)

- Discounts. Do not rely only on case law.Berg Estate v. Comm'r,T.C. Memo 1991-279
- Explain the weight given to each methodology used. Otherwise, if one methodology is rejected, the whole report any fail.True Estate v. Comm'rT.C. Memo 2001-167 aff'd., 390 F.3d 1210 (10thCir 2004)
- Tax Affecting Earnings if an S Corp. or Partnership. Calculation both ways. Recent Cases,Kress, Estate of Jones.If do not tax affect, can the marketability discount be increased
- 2703 – Watch it
- Do I need a "good" Form 8283?
- Do I need a "good" receipt/ acknowledgement

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Valuation Checklist (cont.)

- Justify the discount rate being used in the calculation
- Statement of qualifications that meets Tax Court Rule 143
- Exhibits showing calculations
- What is the FMV of the interests being valued?
- Signed certification

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Traps for the Unwary When Obtaining Valuation/ Appraisal Reports

- *Exelon v. Comm'r,*906 F.3d 513 (7th Cir. 2018)
  - SILO tax shelter
  - Appraisal of power plant found to lack credibility because the attorney interfered with the integrity and independence of the appraiser by providing wording and conclusions the lawyer expected to see so that the lawyer could issue a tax opinion
  - Loss on (1) valuation issue; and (2) reasonable cause defense to a penalty
- Need an appraiser who understands the process
- Be careful about "educating" an appraiser
- Assume whatever is sent to the expert will be made available to the IRS – What can I ethically say valuation expert.

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Low Valuation Issues (*e.g.*Charitable Donations)

Three Concerns
- Form 8283
- Qualified Appraisal
- The Receipt/ Acknowledgement from theDonee

- Section 170(f)(11)(A)(i) provides that no charitable contribution deduction is allowed unless the taxpayer meets certain requirements
- (B) requires the taxpayer to "include with the return... a description of such property and such other information as the Secretary may require..."
- (D) requires that for donations over $500,000 the taxpayer must "attached to the return a qualified appraisal of [the donated]... property."
- (H) – IRS can issue regulations

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Qualified Appraisal and Form 8283 Issues Appraisal Issues for In Kind Donation

- Reg. 1.170A- 13(c)(2)(A) must attach a qualified appraisal to the return; and (2)(B) must attach the appraisal summary (*i.e.,* Form 8283)
- Reg. 1.170A-13(f)(2) and (3) –Doneemust provide a contemporaneous written acknowledgment as to whether the Donor received any goods or services from theDonee. Must be received by the earlier of the filing or extended due date of the tax return.
- Reg. 1.170A- 13(c)(4)(iv)(H) – Reasonable Cause for Failing to Attach Appraisal Summary (may help with appraisal and receipt)

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Qualified Appraisal and Form 8283 Issues Appraisal Issues for In Kind Donations (cont.)

- Arguments

Qualified Appraisal

- Taxpayer must provide sufficient information to permit the IRS to evaluate the reported contributions, as intended by Congress. SeeMohamed v. Comm'r T.C. Memo 2012-152,quoting theEstate of Clause v. Comm'r 122 T.C. 115, 122 (2009).The qualified appraisal and Form 8283 that was attached to the 1040 meet this test

Form 8283

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Bad Form 8283 – Solutions

- Further, Treasury Regulation Section 1.170A- 12(c)(4) and (c)(4)(iv)(H) note that a taxpayer is allowed to explain if he or she has reasonable cause for an inadequate Form 8283. The same regulation allows the IRS to request that a taxpayer provide a correct Form 8283 within 90 days. If this request is complied with the charitable deduction will not be disallowed as long as the taxpayer's error was in good faith. See Treas. Reg. 170A-13(c)(4)(iv)(H).
- In the instant case the Service has not requested that the alleged defects noted in the Revised Lead Sheets on the Form 8283 be corrected.

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Inadequate Form 8283 - Solutions

- Strategy
- “While the Service has never requested that the defects on the Form 8283 alleged in the Revised Lead Sheets at issue be corrected, a new Form 8283 is being faxed to you. The Taxpayer is providing the IRS with a new Form 8283 that is signed by the appraiser andDonee. Also, the basis of the donation at issue is included on this form.
- As noted in the instructions to Form 8283, failure to attach a correct Form 8283 to a tax return will not result in a contribution deduction being disallowed if the failure is due to reasonable cause and not willful neglect. See instructions to Form 8283 at 8 (Rev. December 2021).

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WT Apt Partnership LP v. Comm’r,T.C. Memo 2025-030 (4.9.2025)

- Reasonable cause exemption does exist.
  - May help with an inadequate qualified appraisal

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Get a Good Appraisal – Section 2703 Trap

- 2703(a) – When valuing property for Gift, estate, or GST purposes, cannot consider any option agreement or right to acquire or use the property at a price below fair market value.
- 2703(b) – Exception to (a) if the restriction is
  1. A bona fide business arrangement;
  2. Not a device to transfer property to Members of the transfer's family for less than fair market value; and
  3. Terms similar to arms-length transaction.SeeEst. ofAmlie v. Comm'r,T.C. Memo 2006-76

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Valuation Traps

1. Assumption Letter and/or in the Report – avoid this assumption:

"This valuation assumes there are no Internal Revenue Code Chapter 14 or other federal or state laws or regulations that will have a material impact on the value of the property being appraised. Specifically, we assume the LLC meets the legal requirements of IRC Sections 2703 and 2704 of Chapter 14 if the Internal Revenue Code as they apply to the specific facts and the LLC Agreement. In addition, we have assumed that the terms and conditions of the ___ Agreement are not more restrictive that applicable state law."

Helpful Report Language – Assumes agreement is not considered to the extent it is more restrictive than state law.

"The following factors generally have an upward impact on the discount for lack of marketability but were not given weight in the valuation due to the special valuation rules in Chapter 14 of the Internal Revenue Code."

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Traps and Models (cont.)

Watch Local Law – Wisconsin LLC law – Pre and Post 12/31/2022. Common trap if states that adopted the Uniform Limited Liability Company Law (WELLCL) (*e.g.,*Missouri LLC formed before 8.28.2022 could so elect)

Pre 1.1.2023 (caution if the LLC predates 2023, it may have elected to stay under this law – Check the State Department of Financial Institutions for a "Statement ofNonapplicability") Wisconsin example

183.0604. Distribution upon dissociation. Except as otherwise provided in this subchapter, upon an event of dissociation under s. 183.0802 that does not cause dissolution of the limited liability company, a dissociating member is entitled to receive any distribution to which the member is entitled under an operating agreement and , if not otherwise provided in an operating agreement,**within a reasonable time after dissociation, the dissociating member is entitled to receive a distribution in complete redemption of the fair value of the member's interest in the limited liability company as of the date of dissociation based on the member's right to share in distributions from the limited liability company.**

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Traps and Models (cont.)

Post 12.31.2022

183.0404 Sharing of and right to distributions before dissolution.

(1) Except to the extent necessary to comply with any transfer effective under s.183.0502or charging order in effect under s.183.0503,any distributions made by a limited liability company before its dissolution and winding up must be made proportionally among members and dissociated members on the basis of the value of the contributions made by each such member, as stated in the records required to be kept under s. 183.0402(2) or, in the case of a company treated as a partnership for tax purposes, the partnership capital account of each such member as computed for tax reporting purposes.

(2) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

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Ethical Concerns

- Need a good appraisal
- How to correctly retain an expert
- Watch the details and requirements
- Hot audit issue
- Diligence
- Reliance on written advice
- Valuation penalties under 6662(h), 20% and 40% Substantial (65% or less of “correct” amount) and Gross (40% or less of the “correct” amount)

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Valuation Penalties

- Four Penalties – two in the gift tax context and two in the income tax context. These “triggers” are mathematical:
  - Substantial Valuation Misstatement (income tax)
  - Substantial Estate or Gift Tax Valuation Understatement
  - Gross Valuation Misstatement (income tax)
  - Gross Estate or Gift Tax Valuation Understatement

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Valuation Penalties (cont.)

- Estate and Gift Tax Understatement of Value
  - Substantial Valuation Misstatement
  - There is a 20% penalty of the portion of the underpayment of tax attributed to undervaluation if the value on the estate or gift tax return is 65% or less of the amount determined to be correct
    - Section 6662(a), (b)(5), (g)
- Gross Valuation Misstatement
  - There is 40% of the tax attributable to the undervaluation if the amount is reported on the estate or gift tax return is 40% less of the value determined to be correct
    - Section 6662(h)(1), (2)(C)
  - There is no penalty if the underpayment of tax is $5,000 or less
    - Section 6662(g)(2)

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Income Tax Overstatement of Valuee*.g., a Charitable Contribution*

- Substantial Valuation Misstatement
  - There is a 20% penalty applicable to any underpayment attributable to a Substantial Valuation Misstatement
    - Section 6662(b)(3)
  - A substantial valuation misstatement occurs if the value (or adjusted basis) of any property claimed on a return claimed income is 150% or more of the correct amount
    - Section 6662(e)
  - The penalty is not imposed unless the misstatement results in an underpayment of greater than $5,000 ($10,000 for a C-corporation)
    - Section 6662(b)(2)

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Gross Valuation Misstatement

- There is a 40% penalty in the case of a Gross Valuation Misstatement.
- A Gross Valuation Misstatement occurs if the value of the property is 200% or more of the correct value section.
- The standard is automatically met if the correct value is zero.
  - Treas. Reg. Section 1.6662-5(g).
- Example
  - Donor claims a deduction under Section 170 for the donation of property to a qualified charity

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Reasonable Cause and the Income Tax Valuation Penalties

- A reasonable cause exception under Section 6664 can apply when the underpayment is attributable to a substantial (but not a gross) understatement with regard to a charitable contribution if the follow occurs:
  - The claimed value of the property is based upon a qualified appraisal by a qualified appraiser;
  - The taxpayer also made a good faith investigation of the value of the contributed property; and
  - The taxpayer acted with reasonable cause and in good faith
    - Section 6664(c)(3)
  - A showing of reasonable cause and good faith avoids the estate and gift tax penalties except does not apply to a gross valuation misstatement on a Charitable Contribution Section 6664(c)(2)
    - Section 6664(c)(1)

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Reliance – General Rule Reasonable Cause – IRS Regulation

- In order to establish reasonable cause and good faith the taxpayer must show the following:
  - The advice received was based on all pertinent facts and circumstances and the laws that relate to those facts and circumstances
  - The advice was not based on unreasonable assumptions and did not unreasonably rely on the taxpayer's or someone else's statement findings, etc.
  - The advice was not based on the invalidity of a regulation unless certain disclosure requirements are met.
    - See Treas. Reg. Section 1. 6664-4(c)

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Reasonable Cause

- Defined as Ordinary Business Care and Prudence
- Section 6662 Penalty can be avoided by showing reasonable cause (in most cases)
- Proof of Reasonable Cause, when arguing reliance on a professional – 3-part test
  - Advisor was competent and had significant expertise to justify reliance
  - Taxpayer gave advisor adequate and necessary information
  - Taxpayer relied in good faith upon the advisor

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Valuation: Four Questions Before You Rely on the Report (1 of 2)

VALUATION

1. Engagement

Who retained the appraiser? What is the purpose, date, standard of value and interest being valued?

2. Methodology

Does the report explain information considered, methods used, weighting, discounts and calculations?

3. Legal Assumptions

Check Chapter 14, operating-agreement restrictions and applicable state LLC law. Do not let a boilerplate assumption decide a legal issue.

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Valuation: Four Questions Before You Rely on the Report (2 of 2)

VALUATION

4. Defensibility

Confirm qualifications, certification, exhibits and the final fair-market-value conclusion.

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Appraiser Independence: The Exelon Warning

VALUATION

Use a qualified appraiser who understands the assignment and process.	Educate the appraiser about relevant facts and legal constraints, but do not dictate wording or conclusions.
Assume substantive communications with the expert may be scrutinized later.	Coordinate appraisal quality with the potential reasonable-cause defense.

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Charitable Contributions: Three Documents, One File

CHARITABLE CONTRIBUTIONS

Qualified Appraisal	Confirm the valuation meets applicable qualified-appraisal requirements.
Form 8283	Review completeness carefully, including basis and required signatures when applicable.
Donee Acknowledgment	Check the contemporaneous written acknowledgment and whether goods or services were provided.

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Chapter 14 and Local-Law Traps

VALUATION

§ 2703 can disregard certain restrictions for estate, gift and GST valuation unless the statutory exception applies.	Avoid valuation assumptions that simply presume compliance with §§ 2703 and 2704.
For LLC interests, compare governing-document restrictions with the applicable state-law default rules.	For Wisconsin entities, determine which version of the LLC statute governs before analyzing dissociation and distribution rights.

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Refund Claim Traps

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Refund Claims: Deadline Issues

REFUNDS

§ 6511	Track the three-year-from-return and two-year-from-payment rules, together with the applicable lookback limitation.
Claim Content	State all grounds carefully. The variance doctrine can limit later refund litigation to grounds presented administratively.
Denial	A formal disallowance can start a separate two-year period for filing refund litigation. Track Letter 105C and any extension strategy.

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Protective Claims and Filing Discipline

REFUNDS

Use the proper claim form and preserve proof of timely filing.	Protective claims can preserve rights when the ultimate entitlement depends on unresolved facts or law.
Do not wait for an audit or another proceeding to resolve if the refund statute may expire first.	Treat limitations analysis as a separate workstream with its own calendar and written confirmation.

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Do Not Blow Critical Deadlines

- The Three Principal Claim for Refund forms are as follows:
  - Form 1040X is used to claim a refund of individual income taxes
  - Form 1120X is used to claim a refund of an overpayment of corporate income tax
  - Form 843 is used to claim a refund of any tax other than income tax as well as penalties and interest
- Informal claims are possible – but not recommended
- If a return is filed or the tax is paid prior to the due date, for statute of limitations purposes, the return is treated as filed and the tax is treated as paid on "the last possible day" the return could have been filed without being delinquent
- The early payment of the tax rule occurs when a taxpayer's wages are subject to withholding or estimated tax payments are made
- The amount of the claim is limited by whether the taxpayer has fallen under the three-year statute of limitations or two-year statute of limitations
- Code Section 6511 provides that a claim for refund must be filed within three years of the date the underlying return was filed or within two years of the date the tax was paid, whichever is later

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Amended Returns and Mail Box Rule of Section 7502

- An amended return showing tax due – no mail box rule (not "required" to be filed
- Return claiming a refund of tax – mail box rule applies (return is "required" to be filed) CCA 20152003 – but be smart. Avoid the fight

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The Protective Refund Claims

- Use the correct form
- Can you just send a letter?
- Comment: Big problem if this is missed

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Hot Issue, Refund Claim Traps For The Unwary

- Trap for the Unwary
  - The claim is formally denied on IRS Letter 105C. This starts a two-year clock from filing a complaint in Court. The IRS is not routinely issuing Letter 105C.
- Comment: Trap for the unwary – a Form 907, which extends the two-year clock, requires a special power of attorney. The form also requires high level authority to sign.

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Contents of Refund Claim

- Make your claim as broad as possible
- Watch out for the “variance doctrine”
- Courts will only allow a taxpayer to bring suit on a claim for refund on the grounds raised in the claim for refund. Thus, care should be taken to assure that all grounds have been stated in the claim for refund

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Do Not Wait to File a Refund Claim

- NOL Example
- Audit Example
- IRS Letter 105C Example

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High-Net Worth / Family Office Audits

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High-Net-Worth / Family Office Audits

HIGH NET WORTH

Broad Scope

One examination can reach valuation, business entities, charitable contributions, aircraft, foreign items, basis, at-risk and passive-loss questions.

§ 162 / § 183

Business-purpose and profit-motive documentation should coexist with tax planning, not be reconstructed only after examination begins.

Family Office

Business status requires actual business facts. Entity choice alone does not convert a nonbusiness activity into a trade or business.

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Private Aircraft: Audit Checklist

AIRCRAFT

Document business purpose and maintain dependable flight logs.	Analyze § 280F business-use and recapture rules, related-party leasing and fringe-benefit treatment.
Separate personal entertainment from non-personal entertainment and evaluate SIFL consequences.	Coordinate federal structure with FAA operating rules, dry-lease facts and state tax issues.

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Passive Loss & Research Credit

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Passive Loss and Real Estate Professional

PASSIVE LOSS

Material Participation

Build evidence under the applicable tests. Investor-type activity generally receives different treatment from operational participation.

Real Estate Professional

Track the more-than-half personal-services test and the 750-hour requirement together with material participation.

Proof

Contemporaneous logs, supported testimony and careful grouping analysis are stronger than after-the-fact estimates.

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Passive Losses and the Real Estate Professional

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Passive Losses and the Real Estate Professional

- Section 469
- Rental Real Estate
- Real Estate Professional
- Proving Material Participation
- Make a Grouping Election – watch limited partnership trap

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Passive Loss Rules

- Limit a taxpayer from deducting losses and excess credits from a passive activity against income from nonpassive activities. I.R.C. § 469(a)
- A passive activity is one that:
  - Involves the conduct of a trade or business in which the taxpayer does not materially participate. I.R.C. § 469(c)(1)
  - Is a rental activity. I.R.C. § 469(c)(2)

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Passive Loss Rules (cont.)

- Establishing Material Participation
  - A taxpayer materially participates in an activity if, and only if, the taxpayer meets one of the following seven tests:
    - Work done in a taxpayer's capacity as an investor does not count toward the 500 Hour test, unless the taxpayer is directly involved in the day-to-day management or operations of the activity. Treas. Reg. § 1.469-5T(f)(2)(ii)
    - Investor activities include studying and reviewing financial statements or reports on an activity, preparing studies or analyses of the activity's finances or operations for the taxpayer's own use, and monitoring the activity's finances or operations in a nonmanagerial capacity

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Passive Loss Rules (cont.)

- Facts and circumstances. Treas. Reg. § 1.469-5T(a)(7)
  - Taxpayer can establish material participation by regular, continuous and substantial involvement in an activity based on all the facts and circumstances
  - Must participate in activity for more than 100 hours. Treas. Reg. § 1.469-5T(b)(2)(iii)
  - Caution! Services performed in the management of an activity are disregarded unless:
    - No other individual is compensated for performing management services in connection with such activity; and
    - No other individual performs management services that exceed the hours spent by the taxpayer. Treas. Reg. § 1.469-5T(b)(2)(ii)

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Passive Loss Rules (cont.)

- A taxpayer must establish hours of participation under the seven tests
  - Any reasonable means of proof is sufficient to establish hours of participation. Treas. Reg. § 1.469-5T(f)(4)
  - Courts and the IRS are skeptical when a taxpayer makes extravagant claims on the number of hours of participation
  - Courts generally do not accept "post-event ballpark guesstimate" of hours unless supported by credible testimony and other objective evidence
  - Taxpayers are recommended to keep careful records of participation
  - Practice Tip
    - Use an affidavit
    - A client interview
    - Keep good logs

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Passive Loss Rules (cont.)

- Special Rules for Real Estate Rental Activities
  - Taxpayers who qualify as "real estate professionals" may treat their real estate rental activities as nonpassive upon a showing of material participation. I.R.C. § 469(c)(7)
  - To qualify as a "real estate professionals"

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Passive Loss Rules (cont.)

- For individuals:
  - The taxpayer must satisfy the two following requirements:
    - More than one half of all personal services performed in trades or businesses must be performed in the real property trades or businesses; and
    - More than 750 hours of services must be performed in real property trades or businesses in which the taxpayer materially participates. I.R.C. § 469(c)(7)(B)
  - Personal services include any work performed by the individual in the connection with a trade or business, except for:
    - Worked performed by an individual in the individual's capacity as an investor. Treas. Reg. § 1.469-9(d)(4)

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Passive Loss Rules (cont.)

- Services performed as an employee, unless the employee is a 5% owner of the employer. I.R.C. § 469(c)(7)(D)(ii)
  - Practice Tip: When looking to purchase Real Estate (*e.g.*, Apartment Buildings), document that the activity is not investment activity
- Services of the taxpayer's spouse cannot be combined to satisfy either of the two requirements. Treas. Reg. § 1.469-9(c)(4)
- Caution! Rental activities held through a passthrough entity constitute a single interest if the entity grouped its real estate as a single activity. Treas. Reg. § 1.469-9(h). However, if a taxpayer owns directly or indirectly a 50% or greater interest in the passthrough entity, each interest in rental real estate is treated as a separate interest unless the taxpayer makes his or her own election to treat all interests in real estate as a single activity.

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Research Credit Issues

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Research Credit: A Clean Four-Part-Test Framework (1 of 2)

RESEARCH CREDIT

Business component and permitted purpose

Identify what was developed or improved and the intended improvement in function, performance, reliability or quality.

Technological uncertainty

Identify capability, method or appropriate-design uncertainty existing at the outset.

Process of experimentation

Show alternatives evaluated through modeling, simulation, testing, systematic trial and error or another evaluative process.

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Research Credit: A Clean Four-Part-Test Framework (2 of 2)

RESEARCH CREDIT

Technological in nature

Tie the experimentation to engineering, physical or biological sciences, or computer science.

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Research Credit: Proof by Business Component

RESEARCH CREDIT

People

Who performed or supported qualified services, and what records support that conclusion?

Projects & Activities

Tie each business component to uncertainty, alternatives evaluated and the actual technical work undertaken.

QRE Reconciliation

Connect wages, supplies and contract research from source records through workpapers to Form 6765.

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Research Credit: 2026 Practice Focus

RESEARCH CREDIT

Substantiation

Maintain contemporaneous project and QRE documentation, including relevant base-period support.

Form 6765

More granular business-component reporting increases the importance of tying the return to the underlying technical record.

Audit Management

Expect questions about sampling, generic narratives and the match between claimed activities and actual records.

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Taxpayer Assistance and Service Act: Proposed Changes to Watch

PROPOSED LEGISLATION

Tax Court

The proposal would expand Tax Court options for certain refund and CDP matters, including qualifying refund cases up to $2 million.

Refund Claims & Appeals

The proposal would structure IRS action on timely refund claims, Appeals review and suspension of the refund-suit period during Appeals.

Practice Administration

Other provisions address online practitioner access, electronic filing timeliness, collection procedure and selected penalty processes.

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Proposed Refund, Appeals and Tax Court Changes

PROPOSED LEGISLATION

Potential Tax Court refund jurisdiction for qualifying claims not exceeding $2 million.	Potential partial-payment refund litigation for certain taxpayers in installment agreement or currently-not-collectible status.
Proposed 12-month IRS determination period for timely refund claims, absent agreement otherwise.	Proposed Appeals path for disallowances, with a deemed-disallowance mechanism if the IRS does not timely act.
Proposed suspension of the two-year refund-suit period during Appeals and for 30 days afterward.	These items remain proposals until enacted and applicable effective-date requirements are satisfied.

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Employment Tax & ERC

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Worker Classification: Section 530 Safe Harbor

EMPLOYMENT TAX

Reasonable Basis

Potential grounds include prior IRS audit practice, published authority, industry practice or another reasonable basis.

Consistency

The taxpayer must satisfy return-filing and worker-treatment consistency requirements.

Scope

Section 530 addresses employment-tax treatment. Do not treat it as a universal worker-classification rule.

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§ 409A and Deferred Compensation: Keep the Issue Focused

COMPENSATION

Exam Questions

When are deferred amounts included in the service provider's income, deductible by the employer and subject to employment tax?

Document Check

Identify the arrangement, deferral and payment terms, election timing, payment triggers, payroll reporting and any correction history.

Equity Connection

Options, stock appreciation rights and restricted stock units can raise § 409A questions depending on structure. Valuation may matter for stock-right exceptions.

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Employment-Tax Procedure

EMPLOYMENT TAX

§ 6513(c) affects when timely filed employment-tax returns are deemed filed for refund-limitations purposes.	Interest-free adjustment rules can reward resolving and paying certain employment-tax adjustments promptly.
If a case proceeds too far into notice-and-demand territory, interest-free treatment may no longer be available.	ERC work raises merits, penalty, diligence and limitations questions that should be separately documented.

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IRS Practitioner Oversight Restructuring

OPR and RPO aligned under a new TPMO

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OFFICIAL ANNOUNCEMENT

What the IRS changed

The announcement frames the change as an organizational efficiency measure

1. On June 8, 2026, the IRS announced the Tax Professional Management Office.
2. Effective June 28, 2026, RPO and OPR align under the TPMO.
3. Chris Pleffner was identified as the head of the new office.
4. The IRS described the goal as simplified and modernized interaction with the tax professional community.

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ORGANIZATION

Distinct missions under one umbrella

Return Preparer Office

- PTIN administration
- Enrollment programs
- Annual Filing Season Program
- Program and registration functions

Office of Professional Responsibility

- Circular 230 enforcement
- Misconduct investigations
- Disciplinary proceedings
- Practitioner conduct and discipline

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IRS ASSURANCE

The missions are stated to remain intact

> *The missions of RPO and OPR will remain intact and will operate independently within their respective roles and authorities.*
>
> **IRS statement, June 8, 2026**

- The IRS says credentialed professionals and uncredentialed preparers remain distinct.
- The stated change is organizational, not a change to Circular 230 itself.

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PRACTITIONER CONCERNS

Why the structure matters

Distinguish confirmed organizational facts from predictions about enforcement behavior

1. RPO performs registration and program-administration functions.
2. OPR performs investigative and disciplinary functions.
3. Housing both within one office creates questions about functional separation, resources, and perceived independence.
4. The official assurance of independent roles should be compared with actual implementation.

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OPR BASELINE

What has not changed

The formal legal duties continue even when the reporting structure changes

1. OPR retains exclusive delegated authority and oversight responsibility for practitioner conduct and discipline.
2. Circular 230 continues to govern practice before the IRS.
3. Disciplinary tools include proceedings and sanctions for confirmed violations.
4. Education and outreach remain part of OPR's mission.

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DUE PROCESS

How a Circular 230 matter begins

Use the process, not assumptions about restructuring, to evaluate a specific matter

1. Referrals may come from internal or external sources.
2. OPR first determines jurisdiction.
3. OPR independently evaluates whether allegations merit inquiry or investigation.
4. The path depends on the facts, evidence, and applicable standards.
5. Not every referral is sanctionable; some matters may close or receive a "soft" letter.

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PRACTICE RESPONSE

Risk management without overreacting

The prudent response is better documentation, consistent review, prompt correction of mistakes, and careful handling of a separate OPR inquiry, not an unnecessary concession on the underlying tax issue.

1. Strengthen support for factual and legal positions.
2. Correct errors promptly and document the correction.
3. Use consistent review standards across matters.
4. Treat referrals and OPR correspondence as distinct from the underlying tax dispute.
5. Protect privilege while developing the factual record.
6. Monitor TPMO implementation and published OPR guidance.

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OPEN QUESTIONS

What remains worth watching

These are monitoring questions, not established consequences

1. Will OPR and RPO maintain operationally separate intake and decision paths?
2. How will staffing and resource allocation be handled?
3. Will public guidance identify new referral or coordination procedures?
4. Will disciplinary timelines or published sanctions change?
5. How will TPMO describe accountability and review within the combined structure?

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OPR RESTRUCTURING

Bottom line

Anchor the presentation in the IRS announcement and current Circular 230

1. The new TPMO is real and effective June 28, 2026.
2. RPO and OPR are aligned under it.
3. The IRS says the offices retain separate missions, roles, and authorities.
4. Circular 230 standards remain the controlling practitioner rules.
5. Implementation should be watched, but unsupported predictions should be avoided.

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Proposed Circular 230 Amendments

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PROPOSED AMENDMENTS AFFECTING §§ 10.50 AND 10.51

PROPOSED, NOT CURRENT LAW

Treasury's stated scope

> *These regulations propose to eliminate provisions related to registered tax return preparers, classify the use of certain contingent fee arrangements by practitioners as disreputable conduct, establish new standards for appraisals and the disqualification of appraisers, and update certain provisions as appropriate.*
>
> 89 Fed. Reg. 104915

- The changes affect practitioners, preparers, appraisers, and program participants.
- The proposal modernizes rather than replaces Circular 230.

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STRUCTURE

PROPOSED, NOT CURRENT LAW

Four principal categories of change

For each proposed amendment, identify the existing rule, quote the proposed language, determine who is affected, and clearly state that the proposal is not operative unless finalized.

1. Remove obsolete registered tax return preparer provisions.
2. Move specified contingent-fee conduct into § 10.51 disreputable conduct.
3. Create or revise appraisal and appraiser-disqualification standards.
4. Update competence and other provisions to reflect modern practice.

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CONTINGENT FEES

PROPOSED, NOT CURRENT LAW

Current Rule and Proposed Change

CURRENT § 10.27

- Current § 10.27 governs contingent-fee restrictions and exceptions.
- Analyze the current text and applicable authority before agreeing to or charging a contingent fee.
- Existing judicial authority remains relevant under current law.

PROPOSED §§ 10.50 AND 10.51

- The proposal would treat specified contingent-fee conduct as disreputable conduct under § 10.51.
- The proposal addresses specified pre-examination return and refund-claim work.
- The proposal is not operative unless and until finalized.

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CONTINGENT FEES

PROPOSED, NOT CURRENT LAW

Practice questions under the proposal

Do not rely on shorthand labels; analyze the actual service and trigger

1. Is the engagement for an original return, amended return, refund claim, examination, Appeals, or litigation?
2. Has the IRS initiated an examination of the return or claim?
3. Is the fee tied to a refund, tax savings, or another result?
4. What do state ethics and fee rules independently require?
5. Does the engagement letter accurately describe the scope and fee mechanics?

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APPRAISERS

PROPOSED, NOT CURRENT LAW

Proposed appraisal and disqualification standards

Coordination among lawyer, accountant, client, and appraiser requires careful role definition

1. The proposal would establish new appraisal standards.
2. It would authorize disqualification where appraisals fail governing standards through reckless conduct or gross incompetence.
3. Tax practitioners should evaluate the appraiser's qualifications, methodology, independence, and compliance record.
4. The retaining professional's diligence remains separate from the appraiser's duties.

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IMPLEMENTATION

PROPOSED, NOT CURRENT LAW

What firms should do now

Current §§ 10.22, 10.35, 10.36, and 10.37 already require substantial controls

1. Track finalization rather than treating the proposal as operative law.
2. Inventory contingent-fee engagements and appraisal-dependent matters.
3. Update technology and AI controls under existing duties now.
4. Prepare engagement-letter and policy revisions that can be activated if finalized.
5. Train professionals to distinguish proposed language from current requirements.

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Questions

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