



KREIG MITCHELL LLC

An Update on Circular 230

KREIG MITCHELL LLC

August 14, 2020

About Kreig Mitchell LLC

Tax Planning

Our experienced tax and probate attorneys are here to provide you with legal representation when your future depends upon it. We have the resources to accomplish great things for the areas in which we work.

Tax Disputes

Whether you need to save taxes on a major transaction, you have been contacted by a special agent about a tax crime, or you need help dealing with the death of a loved one, our firm is here to help. We have earned a reputation for creative planning, effective probate administration, and, with tax and probate disputes, aggressive advocacy on behalf of our clients.

Probate

More info on at <https://kreigmitchell.com>

Standard things an attorney would tell you apply here: The information contained in these slides and in this presentation is not intended and is not a substitute for legal advice. No attorney-client relationship is established absent a written engagement letter.

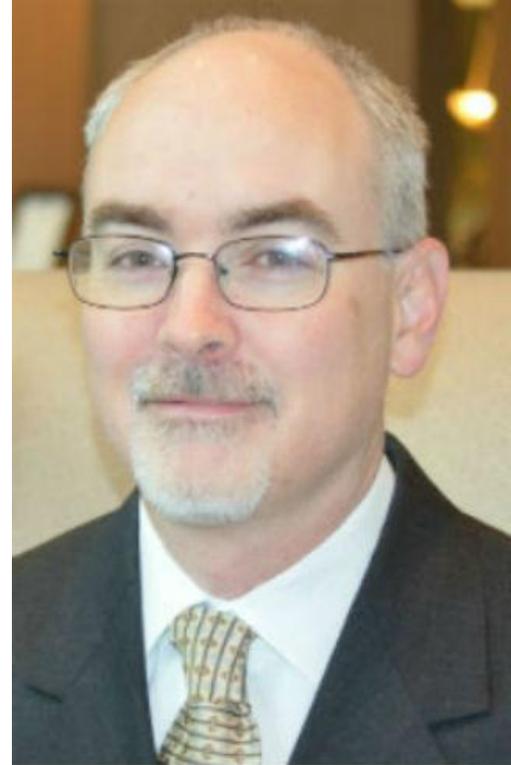
Today's Presenter

Kreig D. Mitchell

Licensed as an attorney in both Texas and Colorado, Kreig has held a number of different tax positions.

He has worked for the IRS as an attorney and then an appeals officer. He's led a tax controversy team for a boutique consulting firm, worked in the tax departments for two Fortune 500 companies, worked for one of the Big Four accounting firms, and has had his own tax practice for several years.

Having worked in just about every tax role available has provided him with a unique insight into the IRS, its operations, and our tax laws.





The Regulatory Framework

The Regulatory Framework

- ▷ State Board of Accountancy and/or AICPA (accountant license/membership)
- ▷ State Supreme Court (law license)
- ▷ IRS and state tax authorities (right to practice, right to e-File tax returns)
- ▷ Courts (civil and criminal penalties)

About Circular 230

About Circular 230

- ▷ Has been around since the 1920s
- ▷ Sets out rules for practicing before the IRS
- ▷ Provides for various sanctions, including disbarment from practice
- ▷ Provides disciplinary mechanism



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IRS Office of Professional Responsibility

IRS Office of Professional Responsibility



- ▷ Most cases referred to OPR by IRS Exam employees
- ▷ Most referrals are handled by a call or soft letter
- ▷ Other referrals result in:
 - Negotiated sanctions
 - Administrative law judge
 - Administrative appeal
 - District court

IRS Office of Professional Responsibility



- ▷ Final result can be monetary penalty, reprimand, censure, suspension or disbarment



Current Status of Circular 230

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- ▷ Last updated in 2014
- ▷ Does not incorporate court cases
- ▷ OPR is still disciplining practitioners
- ▷ Cases have significantly declined



Who is Subject to Circular 230?

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Attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and other persons representing taxpayers before the Internal Revenue Service

Who is Subject to Circular 230?

- ▷ Loving v. IRS - struck down IRS initiative to force unenrolled preparers to become registered preparers
- ▷ AICPA v. IRS - Upheld “unenrolled preparers” program started by the IRS in 2014
- ▷ Sexton v. Hawkins - Circular 230 does not apply to attorney whose right to practice was previously suspended



What is Practice Before the IRS?

What is Practice Before the IRS?



all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings

What is Practice Before the IRS?

- ▷ *Ridgely v. Lew* - the preparation and filing of Ordinary Refund Claims does not constitute “practice” because such claims, by definition, precede agency adjudication.
- ▷ *Loving v. IRS* - return preparation does not constitute practice before the IRS (“practice before’ a court or agency ordinarily refers to practice during an investigation, adversarial hearing, or other adjudicative proceeding.”)



What is Practice Before the IRS?

- ▶ Sexton v. Hawkins - providing tax advice is not practicing before the IRS. This is true even if the tax advisor is also representing the taxpayer with a tax controversy.

The PTIN Requirement



The PTIN Requirement



Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a preparer tax identification number.



The PTIN Requirement

- ▶ Loving v. IRS - IRS can continue the program, but cannot make it mandatory or charge for it



Contingent Fees

Contingent Fees



a practitioner may not charge a contingent fee for services rendered in connection with any matter before the Internal Revenue Service.

But then there are exceptions....



The PTIN Requirement

- ▷ *Ridgely v. Lew* - since preparing refund claims is not practice before the IRS, the prohibition on contingent fees does not apply

Takeaways



Takeaways

- ▷ The IRS's regulatory vision vs. the court's reliance on penalties
- ▷ Shift to state and other regulatory bodies with different agendas and rules
- ▷ Complete overhaul possible in the future

Citations

- ▶ Loving v. IRS, 917 F. Supp. 2d 67 (D.D.C. 2013) (Loving I), vacated in part, 920 F. Supp. 2d 108 (D.D.C. 2013) (Loving II), affirmed, 742 F.3d 1013 (D.C. Cir. 2014) (Loving III)
- ▶ Ridgely v. Lew, 55 F. Supp. 3d 89 (D.D.C. 2014)
- ▶ Sexton v. Hawkins, No. 2:13-cv-00893-RFB-VCF (D. Nev. 2017)
- ▶ AICPA v. Internal Revenue Service, No. 16-5256 (D.C. Cir. 2018)



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Thank You

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SPEAKING OPPORTUNITIES:
If you are looking for someone to present a technical tax topic, feel free to inquire.

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