

ETHICS

Chapter 4 pp. 89-126

2018 National Income Tax Workbook™



Introduction

- Due diligence for FBAR, marijuana clients, and head of household
- Practice continuation agreements
- Providing tax advice by email
- Websites and social media
- Cybersecurity
- Case studies



WHEN WAS THE LAST TIME YOU **REALLY**
LOOKED AT THE SCHEDULE B QUESTIONS
IN PART III?

Due Diligence - FBAR

Duty to identify items to report on a return, and **MUST** ask about foreign financial accounts and foreign trusts

Due Diligence – FBAR p. 91

File FBAR if:

- Foreign financial accounts with aggregate balance at any time > 10K
- Signatory authority over foreign financial account

FBAR Questions p. 91

- Along with those listed in your text:
 - Online Gambling?
 - Relatives in a foreign country?
 - Life Insurance w/cash value in a foreign country?

Duty to Advise

p. 92

If there are foreign accounts to report **MUST** advise to file FBAR and advise about consequences if fail to file

Think you should advise this in writing? – You bet!

You better remember to check the boxes on Schedule B!

If the practitioner determines that there is a foreign bank account to report on Schedule B, the practitioner is not obligated to prepare the FBAR for the taxpayer unless the practitioner is competent to do so and the taxpayer requests that the practitioner provide this additional service.

NOTE: If line 6 is over \$1,500, you must complete Part III.

Part III		Yes	No
You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.			
Foreign Accounts and Trusts (See instructions.)	7a At any time during 2018, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions	<input type="checkbox"/>	<input type="checkbox"/>
	If "Yes," are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements	<input type="checkbox"/>	<input type="checkbox"/>
	b If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ▶	<input type="checkbox"/>	<input type="checkbox"/>
	8 During 2018, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See instructions	<input type="checkbox"/>	<input type="checkbox"/>

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 17146N **Schedule B (Form 1040) 2018**

Preparer Due Diligence p. 95

- Earned Income Credit EIC
- Child Tax Credit CTC
- Amer. opp. tax credit AOTC
- Now Head of Household HOH

- Interview and ask questions to determine filing status
- Document responses
- Complete and submit Form 8867 Paid Preparer's Due Diligence Checklist

Supporting Documents To Prove Head of Household Filing Status

You may qualify for Head of Household filing status if you meet the following three tests:
Marriage Test, Qualifying Person Test, and Cost of Keeping up a Home Test.

Name of Taxpayer	Taxpayer Identification Number	Tax Period Ending
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Marriage Test	If You Are:	Then send photocopies of the following documents for tax year 2017
	Single	Go to the Qualifying Person Test and Cost of Keeping up a Home Test.
	Divorced or legally separated	Entire divorce decree, separate maintenance decree, or separation agreement.
	Married, but your spouse did not live with you during the last 6 months of tax year 2017	Documents verifying your spouse did not live with you during the last 6 months of the year, such as a lease agreement, utility bills, a letter from a clergy member, or a letter from social services.

Qualifying Person Test <i>(If your relationship with the child is not in this listing, please see Publication 501, Exemptions, Standard Deduction, and Filing Information for more information).</i>	If the Person Is:	And	Then send photocopies of the following documents for tax year 2017
	<p>Your child (including an adopted child, or a pending adoption),</p> <p>Your brother or sister, stepbrother or stepsister, or any of their descendants (for example, grandchild, niece, or nephew),</p> <p>Your eligible foster child (a child placed in your home by an authorized placement agency or by a court order).</p>	<p>You can claim a dependency exemption for the child.</p> <p>The child lived in your home for more than half of 2017 (temporary absences away from home, such as time spent at school, count as time lived at home).</p> <p>Note—A married child must be your dependent.</p>	<p>Birth certificates or other official documents of birth, marriage certificates, letter from an authorized adoption agency, letter from the authorized placement agency, or applicable court document that verify your relationship to the child (send these documents only for a qualifying child who is not your natural or adopted child).</p> <p>To show both you and your child lived together for more than half of 2017, send:</p> <ul style="list-style-type: none"> • School, medical, daycare, or social service records • A letter on the official letterhead from a school, medical provider, social service agency, or place of worship that shows names, common address and dates. (If you send a letter from a relative who provides your daycare, you MUST send at least one additional letter.) <p>Send as many documents as necessary to show that the child lived with you for more than half of the year.</p>

Cost of Keeping up a Home Test	If:	And	Then send photocopies of the following documents for tax year 2017
	You pass both the marriage test and the qualifying person test,	You paid more than half the cost of keeping up your home for 2016.	Rent receipts, utility bills, grocery receipts, property tax bills, mortgage interest statement, upkeep and repair bills, property insurance statement, and other household bills.

HEAD OF HOUSEHOLD TESTS

- MARRIAGE TEST
- QUALIFYING PERSON TEST
- COST OF KEEPING UP A HOME TEST



IRS PUBLICATION 501 – PAGE 7 – WORKSHEET 1

NIB

Worksheet 1. Cost of Keeping Up a Home

Keep for Your Records



	<u>Amount You Paid</u>	<u>Total Cost</u>
Property taxes	\$ _____	\$ _____
Mortgage interest expense	_____	_____
Rent	_____	_____
Utility charges	_____	_____
Repairs/maintenance	_____	_____
Property insurance	_____	_____
Food eaten in the home	_____	_____
Other household expenses	_____	_____
Totals	\$ _____	\$ _____
Minus total amount you paid		(_____)
Amount others paid		\$ _____

If the total amount you paid is more than the amount others paid, you meet the requirement of paying more than half the cost of keeping up the home.

HOH Due Diligence Cont.

p. 96

Additional forms and tools:

- EITC checklist
- CTC and AOTC interactive assistants

HOH Due Diligence Cont.

p. 96

- Forms:
 - 886-H-HOH
 - 886-H-EIC
 - 886-H-DEP
 - 886-H-CTC

- File w/return or amended return
- Completed by responsible paid return preparer
- May be more than one → more than one form
- Do you have your client sign this form?

- Keep:
 - Form 8867
 - Worksheets
 - Supporting documents
 - Record of how, when, where, and add'l questions

PARTNERSHIP ISSUES

The changes made to the partnership audit regime are significant. Entities that are taxed as partnerships should consider whether to make changes to their partnership or operating agreements to address these changes (and newly formed entities should consider adopting similar provisions at the outset).

Partnership Agreement Considerations

- All the many elections that arise in a reviewed year that would be, by default, in the hands of the partnership representative are enough itself to consider re-writing the agreement, but also:
- The partnership agreement should consider restrictions on transfers of partnership interests to non-qualifying partners (such as other tax partnerships).
- Partnership agreements should consider providing recourse against former partners for tax assessed for a year during which they were a partner.
- The partnership agreement should set out how the partnership representative is elected, removed and should consider limitations on the partnership representative.

Triple Threat



- New Audit Rules
- New Basis Report Rules
- New QBI Allocation Reporting

Practice Continuation p. 103

Sole practitioner – ethical duty to provide uninterrupted service

What happens to clients if practitioner is suddenly unavailable?

Practice Continuation Agreement

p. 103

- Agreement terms:
 - Provide services upon temporary disability or death
 - Notify clients
 - Transfer documents

Agreement Terms Cont.

pp. 103-104

- Billing clients
- Compensation of practitioner
- Insurance
- Termination - non-solicitation or buyout
- Sample agreement pp. 104-106

How to respond to “quick question” in an email?

Circular 230 – identify the facts and relate applicable law and authorities

Prof. Organization Standards

p. 108

- AICPA SSTS 7 – No format
- Consider:
 - Importance, nature of the ?
 - Time to provide advice
 - Technical complexity
 - Authorities and precedent
 - Sophistication of TP, etc.

Email response must meet competency std.

If necessary, refer.

- Multiple options
- Advise to conduct own due diligence



- **Not required – but still useful**

Tax advice in this email reflects our prof. judgment based on our understanding of the facts provided to us and on current tax law. Tax law is subject to change. Subsequent changes in the facts provided to us, the law, or its interpretation may affect this advice. We are not responsible for updating our advice for subsequent changes in the law or its interpretation.

- Rules that may apply to social media/website:
 - Advertising
 - Solicitation
 - Confidentiality
 - Record retention

Advertising

pp. 110-112

- No false, misleading, deceptive
- No false expectation of favorable results
- No promises about fee if know it is likely to increase

Advertising Cont. pp. 110-112

- No “specialize, expert, expertise”
- Instead “limits practice to” or “concentrates in”
- No “we can reduce your taxes”
- Instead “our goal is to reduce..”

Social Media Branding

p. 112

- Non-CPA can't use CPA
- Prohibitions in some states
 - No character or grade of service (i.e. solution or answer)
- Check with the state board

Confidentiality

pp. 112-113

- No disclosure of TP info on website or social media
- Invite to “like” “friend” or “follow”
OK if to provide tax info or solicit add'l return prep services

- Friend requests on Facebook, inviting to follow on Twitter or Instagram, asking to add to LinkedIn could be solicitation
- Don't do it if know of should have known to not contact

Record Retention p. 113

- Need to retain records of social media and website communications
- Posts and replies, comments, etc.
- Screenshots, copy/paste, print

- Ethical duty to protect client info
 - How to hire an IT prof.
 - What to do if a breach occurs

Publication 5293

Data Security Resource Guide For Tax Professionals



- **Office Security**
 - Required to have
 - Legal Responsibility
 - Pub 4557
 - Gramm-Leach Bliley Act
 - Federal Trade Commission
 - Financial Privacy and Safeguards Rules
 - Pub 1345
 - Small Business Information Security: The Fundamentals – NISTIR 7621

- Ask for recommendations and references from other practitioners
- Ask about experience
- Request a quote
- Check past performance

Responding to Breach

pp. 115-116

- Action plan
 - Contact IRS, law enforcement, state AG
 - Contact IT pro, insurance
 - Contact clients

Responding to ID Theft

p. 116

- Determine what was stolen
- Keep informed
- Fraud alert or credit freeze
- Close accounts

Tax ID Theft

pp. 116-118

- File form 14039
- Return an erroneous refund quickly b/c interest may accrue



Professional tax preparers must have a security plan as required by the Federal Commission and its Safeguards Rule.

See security tips for tax profes

www.irs.gov/protectyourclient

CONSTANTLY CHANGING

Final e-Services User Agreement Language

User Agreement Changes

New Section

The Internal Revenue Service is updating its e-Services User Agreement. Highlights are below:

- Update all information to your e-Services account/applications within 30 days of any changes;
- Keep your e-Services username, password and PIN confidential;
- When using an Intermediate Service Provider whose software requires you to enter your e-Services username, password, or PIN, you must ensure your username, password, and PIN are not stored;
- You must notify your clients when you are using an Intermediate Service Provider;

As part of our ongoing efforts to enhance security and protect sensitive taxpayer data, the following items have been added:

- Contact the Help Desk at 866-255-0654 (international callers use 512-416-7750) if there is unauthorized use of your account;
- Protect the data you access through e-Services; it's your legal obligation to protect all tax information;
- Review Publication 4557, Safeguarding Taxpayer Data, for information about your obligations and suggested safeguards for creating a security plan.

Terms and Conditions

No Change

Please read the following Privacy Act Notice and conditions of use that explain why we are requesting the registration information, how it will be used, and your responsibilities as a registered user of e-Services.

You must accept the presented Terms and Conditions to be granted access to e-Services. If you do not accept these terms, you will not have access to e-Services.

Intermediate Service Providers

New Section

For purposes of this agreement, **Intermediate Service Providers** are organizations that provide web-access or make available software to “bring together” or “facilitate transactions” through e-Services to an authorized e-Services user through a channel, product, or service different from, or in addition to, e-Services.

You may enter your e-Services username, password, and PIN into an Intermediate Service Provider’s channel, product or service to use its services only if you have notified your client and the Intermediate Service Provider does not store your username, password, or PIN in any format whatsoever. It is your responsibility to ensure any information accessed through e-Services will be kept confidential.

If you choose to use an Intermediate Service Provider to access your e-Services account, you also agree to provide the IRS upon request with the name and contact information of the Intermediate Service Provider. If you use the services of an Intermediate Service Provider and there are reasonable grounds to suspect the Intermediate Service Provider is not following required security practices and protecting taxpayer information from unauthorized disclosure, misuse, alteration, destruction, or is otherwise compromising the integrity of the data, the IRS has the right to suspend or terminate your account and refuse any and all current or future use of e-Services.

If you use an Intermediate Service Provider to obtain information from e-Services and you observe a vulnerability, breach, or your e-Services account has been compromised, you must report the incident to the IRS as soon as possible but no later than one business day after discovery to the IRS Help Desk at 866-255-0654 (international callers use 512-416-7750). You may also report the incident to one of your local IRS Stakeholder contacts. Contact information can be found on www.irs.gov at <https://www.irs.gov/businesses/small-businesses-self-employed/stakeholder-liaison-local-contacts-1>.

Safeguarding Taxpayer Data

New Section

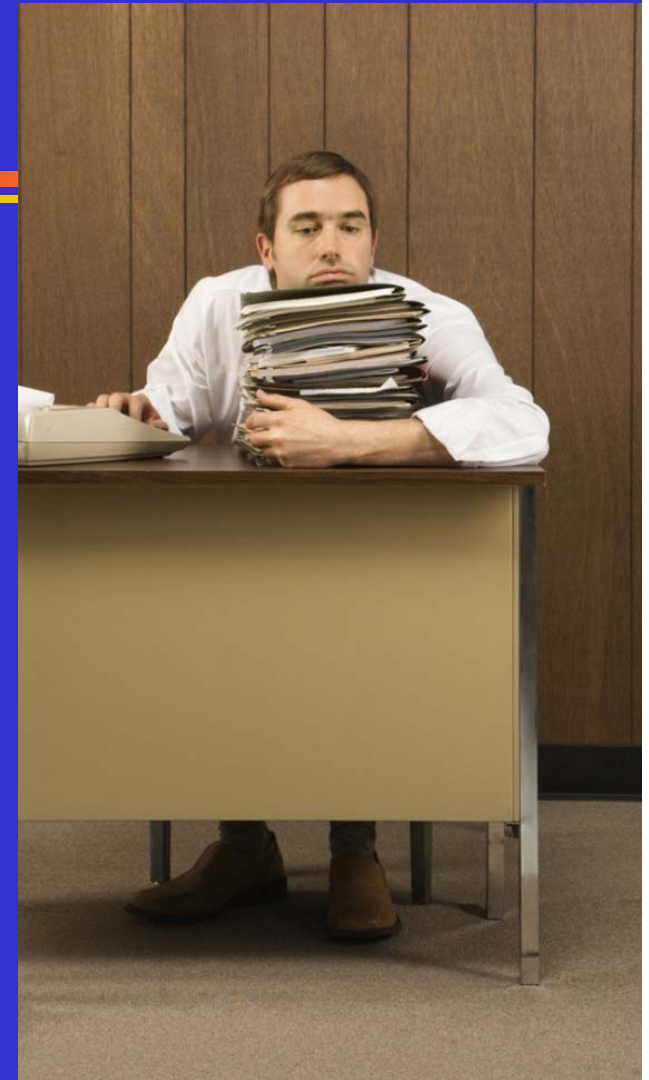
It is the legal responsibility of government, businesses, organizations, and individuals that receive, maintain, share, transmit, or store taxpayers’ personal information to safeguard taxpayer data. Taxpayer data is defined as any information that is obtained or used in the preparation of a tax return (e.g., income statements, notes taken in a meeting or recorded conversations, IRS transcripts). Putting safeguards in place to protect taxpayer information helps prevent fraud and identity theft and enhances customer confidence and trust.

All e-Services users should refer to Publication 4557, *Safeguarding Taxpayer Data: A Guide for Your Business*, on www.irs.gov for more information about your responsibilities for safeguarding taxpayer data and to learn more about developing a security program. Many federal, state, city, and local government laws and regulations are in place to safeguard taxpayer data. Failure to adhere to your responsibilities for safeguarding taxpayer data may subject you to legal action.

Failure to adhere to the appropriate standards may result in termination of your account and refusal of any and all current or future use of e-Services.

OFFICE PROCEDURES

- Employee handbook
- 8879s – signatures and storage
- 8867s – signatures and storage
- 8888 – misuse of this form
- Consent forms
- Conflict of Interest forms – including conflicts of interest with yourself!
- Form 2848 – POAs
- Written Security Plans
- Staff Training Files
- Tax Preparer CPEs & Training Files



Questions?

