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ETHICAL PROBLEMS
IN
FEDERAL TAX PRACTICE

*Fourth
Edition*



Wolters Kluwer

Law & Business

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Ethical Problems In Federal Tax Practice

Fourth Edition

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Law & Business

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Tax Practice

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**To my wife, Toni G. Wolfman
B.W.**

**To Proctor, Bebeth, and Courtney
D.H.S.**

**To Liam, Caroline, and Anna
D.M.R.**

Preface

The “old authors,” Bernard Wolfman and Deborah Schenk, are delighted to welcome Diane Ring as a co-author, not only because of her acumen and writing skills but also because she pulled the laboring oar on this edition. This is also an appropriate time to acknowledge our deep gratitude to Jim Holden, who was a co-author of the first three editions. Jim is a towering member of the tax bar and an expert in professional responsibility issues as they arise in tax practice. He is widely viewed as a conscience of the practicing tax bar. This edition draws heavily on the prior editions and Jim’s contributions to those earlier editions have continued to shape our work.

It has been over a decade since the last edition and much has happened since then. The ABA’s Model Rules of Professional Conduct have been adopted by most states as the basis for regulating lawyer conduct within their borders and have been amended several times. As law firms have expanded and become global entities, the ethical problems faced by lawyers have taken on new dimensions and become ever more complex. After a relative period of quiet, tax shelters, particularly those used by corporations, have become a significant issue again. It has become increasingly apparent that lawyers have played an important role in designing and marketing shelters, as well as issuing opinion letters designed to protect clients from penalties. As a result the Internal Revenue Service has shifted its focus somewhat to target attorneys. The Treasury Department’s efforts to regulate tax practice through Circular 230 were met with a storm of criticism and many disagreements continue. Finally, the last decade has seen a large number of accounting and financial scandals, as well as the implosion of major corporations and accounting firms. Repeatedly commentators have asked, “Where were the lawyers?”

We have designed this book to provide a framework and a source of materials for the study of the ethical problems that a lawyer faces in federal tax practice. It has evolved from our experience in teaching this subject and in our tax practice activity as well. We are convinced that that the prism of tax practice is a useful one through which to explore the most practical as well as the most abstract and philosophical of ethical concerns. We find that a professional responsibility course taught from this focus can provide insights and principles that are applicable in virtually any area of law practice as well as insights that are peculiar to tax practice. Two of us have offered a course in Ethical Problems in Tax Practice that satisfies the ABA mandate that all law students take a course in professional responsibility. One of us has taught a more specialized course to those pursuing an LLM in tax.

Those who have taught from the book before will find that the basic structure of this edition follows the earlier editions, although much material is new, and there has been some reorganization.

Throughout the book we have maintained the underlying theme of role differentiation that brings to the fore the somewhat differing standards that govern the tax lawyer as *advocate* from those that govern the tax lawyer as *advisor*. This reflects the approach taken by the Model Rules, which has standards of conduct that are not quite the same for advisor and advocate. Following an introductory chapter that provides a general professional and philosophical perspective, there are four chapters that study the tax lawyer in his performance of the four overlapping roles that he commonly plays. The next chapter examines the special issues the tax lawyer confronts in government and as the lawyer for an entity. The final chapter turns to the business of the profession.

The materials that we have included are not exhaustive. Every student should acquire a copy of the Model Rules of Professional Conduct (and perhaps the ethical rules that are effective in the state in which he or she will practice). Students will find other helpful materials in the Appendix. A useful reference work is *Standards of Tax Practice* (Wolfman, Holden and Harris 6th ed.), published by Tax Analysts.

Bernard Wolfman
Deborah Schenk
Diane Ring

April 2008

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In Federal
Tax Practice

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