

PART FOUR
PROFESSIONAL RESPONSIBILITY
(24 minutes)

**ANSWER THE QUESTIONS IN THIS PART OF THE EXAMINATION
IN ANSWER BOOK/S SEPARATE FROM THE
ANSWER BOOK/S CONTAINING ANSWERS TO OTHER
PARTS OF THE EXAMINATION**

Question PR-1. (4 minute/s) Husband and Wife jointly filed a tax return for 1997. In 1999, after they have divorced, they received a notice of deficiency with respect to a failure to report a significant item of income on the 1997 return. H and W ask A to represent them. W claims she has no knowledge of the item that the IRS asserts that H received and failed to report.

- (a) Can A represent H and W in a Tax Court proceeding with respect to this return?
- (b) Does the answer to (a) change if W consents to the joint representation?

Question PR-2. (2 minute/s) B represents Y in Tax Court litigation that would be appealed to the Fourth Circuit. After submitting the brief on behalf of Y, B discovers a decision of the Fourth Circuit that is directly contrary to her client's position in this matter. The government's brief does not mention the case. What action if any must B take and why?

Question PR-3. (2 minute/s) C represents Smith in a Tax Court proceeding involving deficiencies with respect to flowthrough interest deductions from a partnership as well as improper depreciation deductions on real estate owned by Smith. As part of the pre-trial process, the government lawyer offers a settlement with respect to the partnership interest deductions. C is surprised by the settlement offer and has never discussed with Smith the possibility of settling this issue. C, however, believes that the government's settlement offer on this issue should be accepted.

Can C sign the stipulation of settled issues without Smith's consent? Briefly explain your answer.

Question PR-4. (4 minute/s) D is the in-house general counsel for Design, Inc. In a Tax Court proceeding involving deductions for certain payments to a shareholder, it will be necessary to call D as a witness to testify about corporate resolutions that D prepared with respect to the payments.

- (a) Can D represent Design, Inc. in this proceeding if Design, Inc., consents? Briefly explain your answer.
- (b) Could the associate general counsel represent Design, Inc., in this proceeding? Briefly explain your answer.

Question *PR-5*. (4 minute/s) E devised a transaction designed to save federal income taxes. He sold this transaction to XYZ Corporation for a fee. In addition, E prepared all the documentation for the transaction. XYZ Corporation subsequently was audited and received a notice of deficiency, which it intends to contest in Tax Court. Under what conditions could E represent XYZ Corporation in the Tax Court proceeding, and what action must E take to do so? Briefly explain.

Question *PR-6*. (4 minute/s) F represents Computer Co. in Tax Court litigation. F learns that the government has contacted employees of Computer Co. who have information relevant to the litigation without notifying F.

(a) On what grounds could F object?

(b) Does the answer to (a) change if the government contacts former employees?

Question *PR-7*. (2 minute/s) Taylor has been assessed a deficiency for failing to file a 1997 return. Taylor wishes to assert that the federal income tax is unconstitutional. Could G, as counsel for Taylor, ethically sign a pleading to that effect? Briefly explain your answer.

Question *PR-8*. (2 minute/s) As part of the discovery process in Tax Court litigation, the government requests production of an employment contract between the petitioner and an employee of the petitioner, which is relevant in determining the petitioner's deduction for salary paid to the employee. The petitioner asserts that the contract is lost. H represents the petitioner and was shown the contract one week before the discovery request. May H inform the government that the contract does not exist? Briefly explain your answer.