# State Ethical Considerations (and Tax Practice)

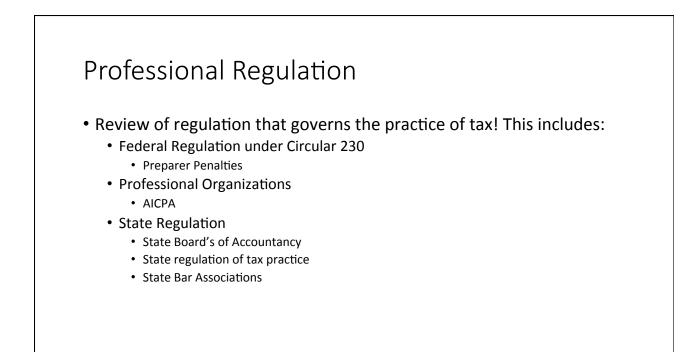
KATHLEEN K. WRIGHT CPA, MBA, JD, LLM (TAXATION)

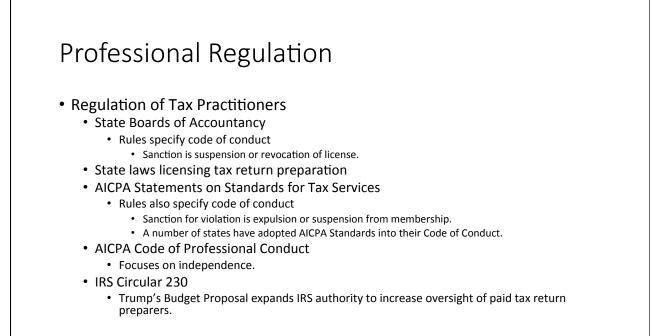
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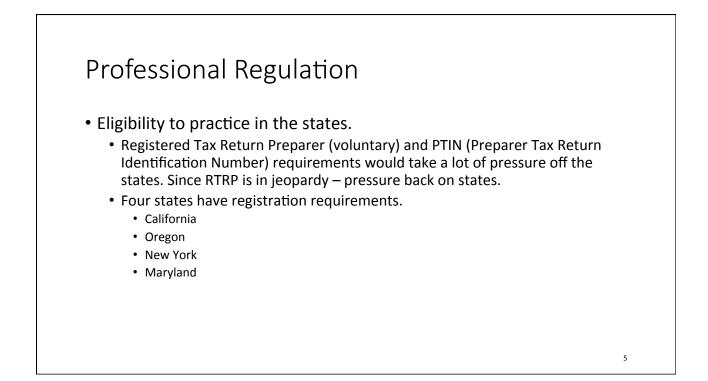
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## Welcome to UC Davis Summer Tax Institute!

- What we will cover:
  - State licensing of tax preparers
    - Only four states have licensing requirements.
    - Ramifications of no licensing in all other states.
  - Unique issues of state practice
    - Confidentiality
    - Standards of practice
    - State tax preparer penalties
    - State disclosure laws
    - State Malpractice
      - Unauthorized Practice of Law
    - State laws that differ from federal laws.







## Professional Regulation: Federal

Category	PTIN	Background Check	IRS Test	Continued Education	Practice Rights
Enrolled Agent	Yes	Proposals Pending	Yes	72 hours every three years	Unlimited
СРА	Yes	Proposals Pending	No	Varies	Unlimited
Attorneys	Yes	Proposals Pending	No	Varies	Unlimited
AFSP	Yes			15 hours each year	Limited

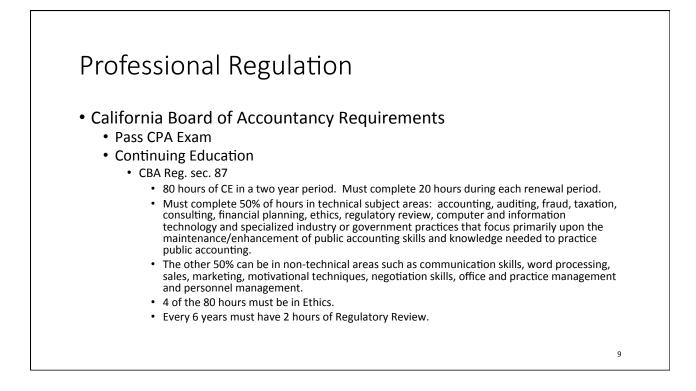


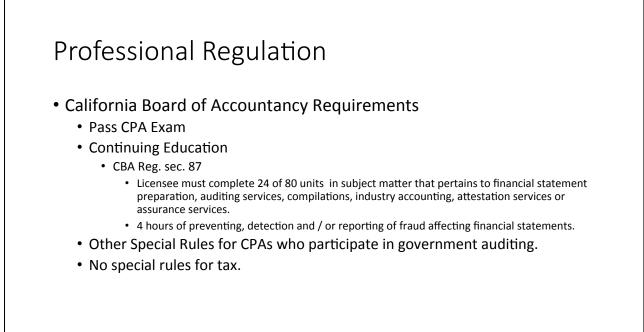
• Question: Joey runs a used car dealership and also prepares tax returns. He has no experience in the tax field and has never taken a tax course. If someone asks him to do their tax return, he tries to get them a refund (and then use the refund to buy a used car)? Joey lives in Arizona. Is this OK?

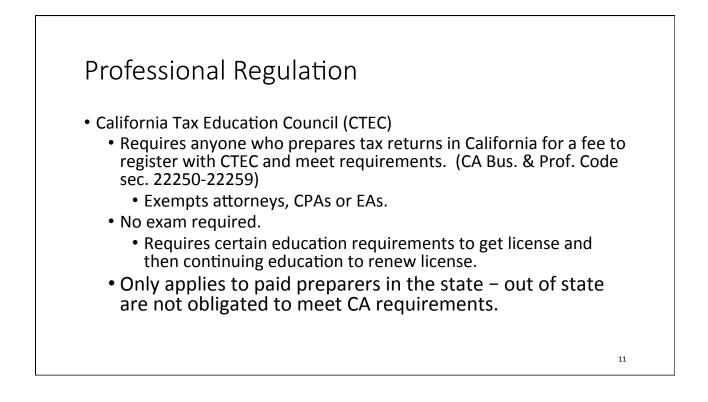
## **Professional Regulation**

- California and Practice of Accounting
  - CPAs governed by California Board of Accounting and defined in B&P Code 5051 to 5053.
  - Includes (amongst many other things) preparing or signing tax returns as a tax preparer.

- California does allow individual or firm holding valid out of state license to prepare tax returns for CA residents without obtaining a permit to practice from the Board of Accountancy as long as they do not:
  - Enter state to practice public accounting
  - Solicit CA clients
  - Do not hold themselves out as licensed in CA.

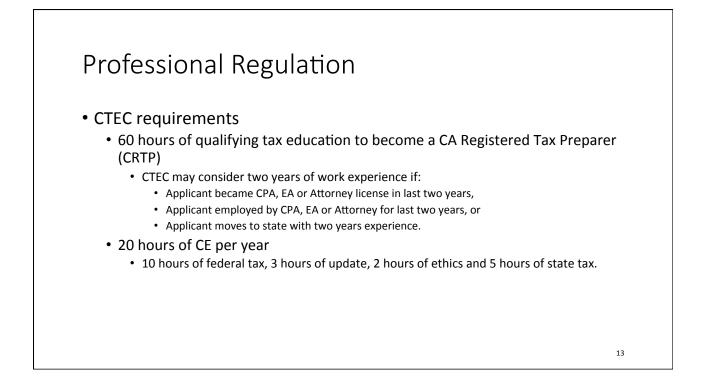






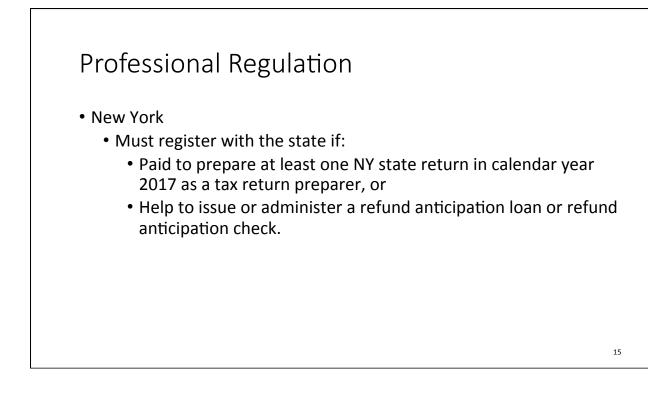


- Anyone who for a fee assists with or prepares tax returns for another person, or who assumes responsibility for completed work on a return, or who holds himself out as offering these services.
  - Not the same as federal law.
- CTEC: Tax return
  - Return, declaration, statement, refund claim or other document required by making or filing in connection with state or federal income or franchise taxes





- CTEC Requirements
  - Obtain PTIN from IRS (in light of *Loving* decision, no requirement to pass exam).
  - Maintain a \$5,000 tax preparer surety bond.
  - FTB now has authority to penalize unregistered tax return preparers.
    Penalty is \$2,500 (Rev and TC 19167).

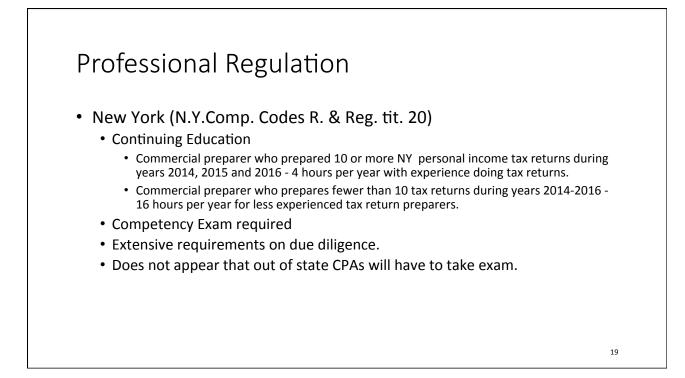


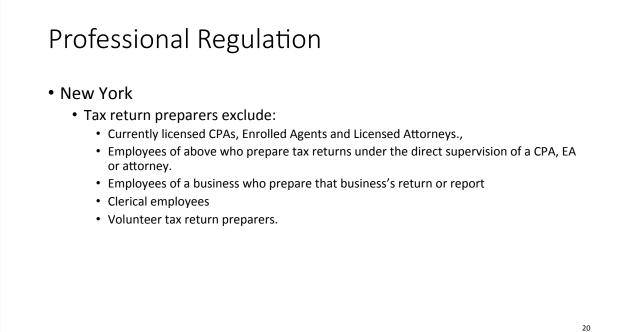
- New York
  - Must pay an annual \$100 registration fee as a commercial tax return preparer, facilitator of refund anticipation loans or refund anticipation checks.
  - Do not have to register if:
    - Attorney, CPA or EA
      - Attorney/CPA exempt if licensed anywhere.
    - Volunteer return preparer
    - Employee of a business who prepares that business's tax return.



- New York
  - Commercial Tax Return Preparer: Prepares 10 or more tax returns for compensation in preceding calendar year, and plans to prepare at least one return for compensation this year. (Or fewer than 10 last year, but will prepare at least 10 this year.)
  - Facilitator: Processes, receives or accepts application for refund anticipation loan.

- Question:
  - Joey is a licensed CPA in California. He prepares 15 New York income tax returns in 2016 for compensation. Does Joey have to register in New York as a commercial tax return preparer?
    - A. Yes, as he prepares 10 or more returns for compensation in the prior year and will prepare at least one return in the current year.
    - B. No, because he is not preparing returns in NY and he is a licensed CPA in California.





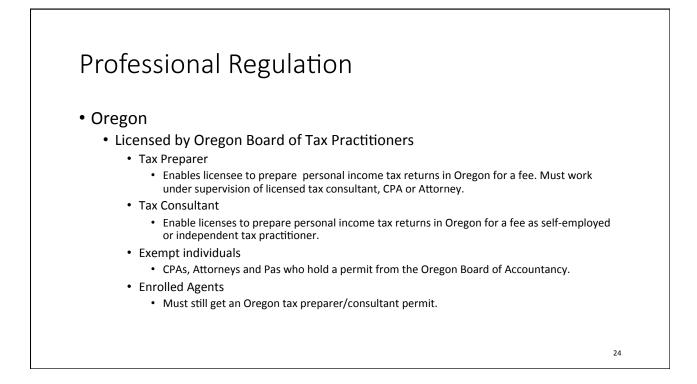
- Maryland
  - Individuals who (for a fee) prepare federal and state tax returns for Marylanders are required to be registered by the Maryland Board of Individual Tax Preparers.
  - Exempt:
    - Actively licensed CPAs
    - IRS EAs
    - Attorneys in good standing, and
    - Employees of state, local and federal government employees who perform tax return services in accordance with official duties.

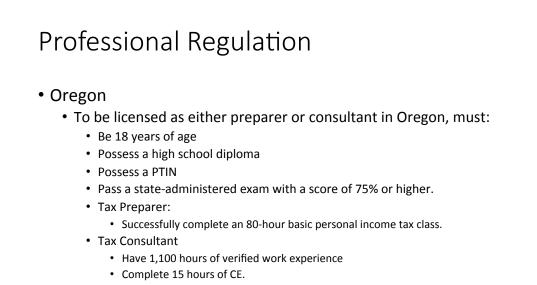
## **Professional Regulation**

- Maryland
  - Must have a current federal PTIN.
  - Must pass the Maryland Tax Preparers Examination (Cost is \$65 and passing score is 70%).
    - Can substitute 15 consecutive years of tax preparation experience during the period of 2002 to 2016.
      - Prepared on average 50 returns annually, with no less than 25 returns prepared in a given year.
  - Failure to meet these requirements may result in suspensions, revocation of registrations and/or civil penalties not to exceed \$5,000.



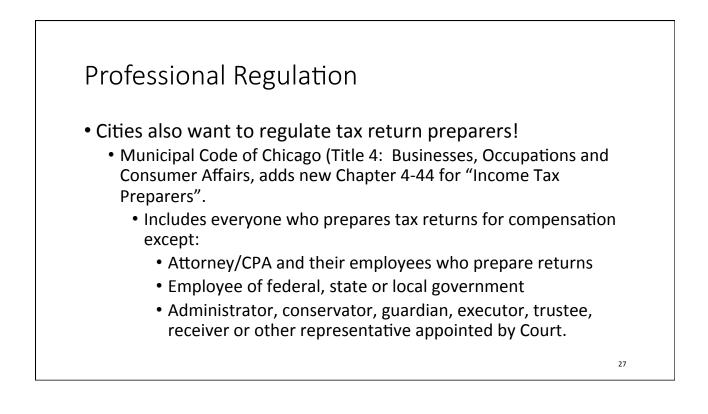
- Maryland
  - Out of state preparers
    - Preparing occasional Maryland return not required to qualify. If preparing Maryland is a significant part of business, then must register with Maryland.
  - Continuing Education
    - Upon renewal (every two years) must complete 16 hours of CE. Four of 16 hours must be in Maryland state tax related subjects.

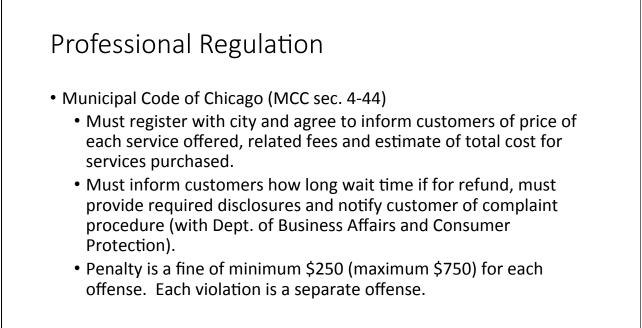


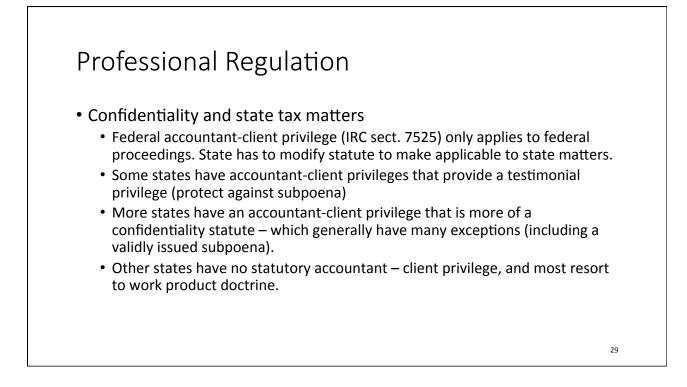


• For EA, do not need experience - only has to pass exam and meet other requirements.

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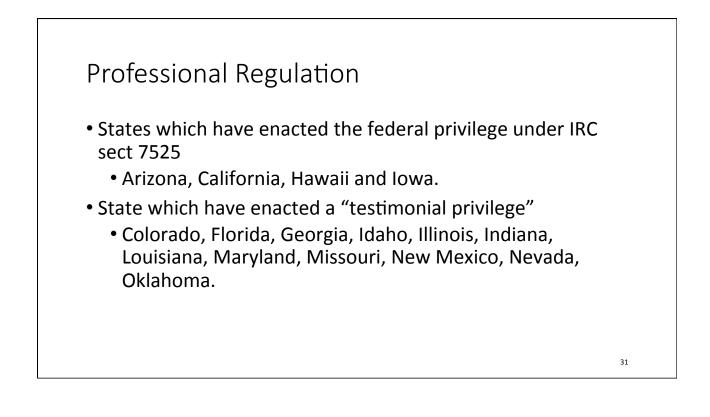




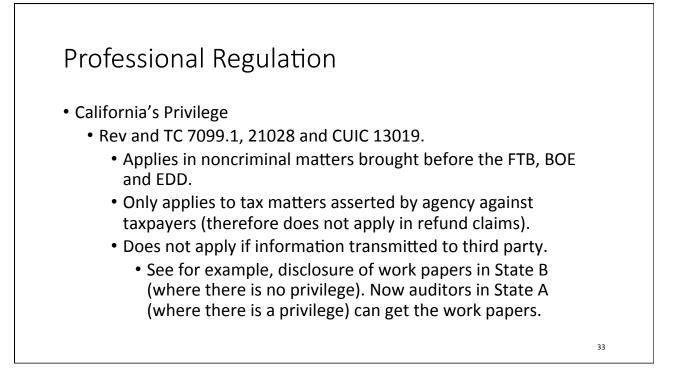


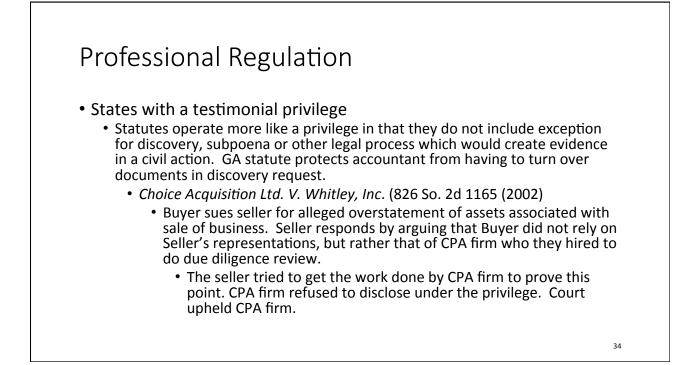
• Question:

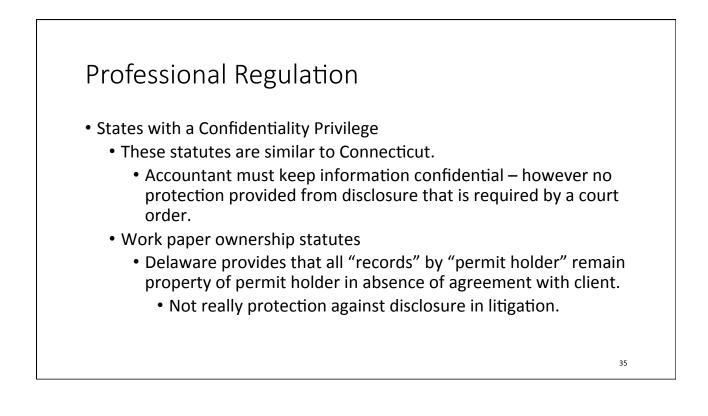
- Auditor in State A requests information that may be privileged in State B.
  - But if I give the auditor in State A the work papers, then I have disclosed the documents and destroyed the privilege in State B. In that case I will have to give State B the work papers too!



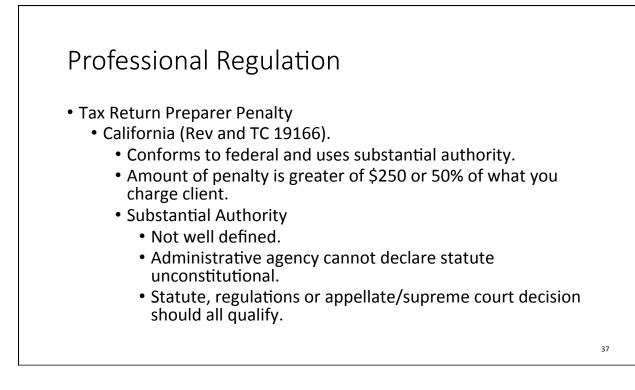


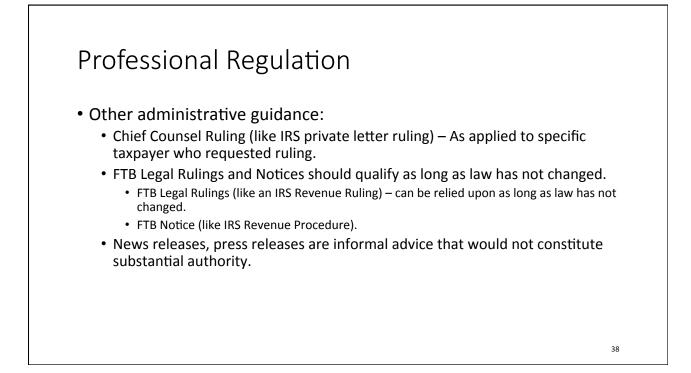






- Question (continued):
  - IRS has issued summons for production of documents produced by Andy. Are they covered by IRC 7525?
    - If the subject of the communication has been disclosed on the tax return (as is the case here) then probably waived the privilege.
      - Dilemma of IRC 7525: Only applies to tax advice that also constitutes legal advice. But wouldn't providing legal advice be the unauthorized practice of law?



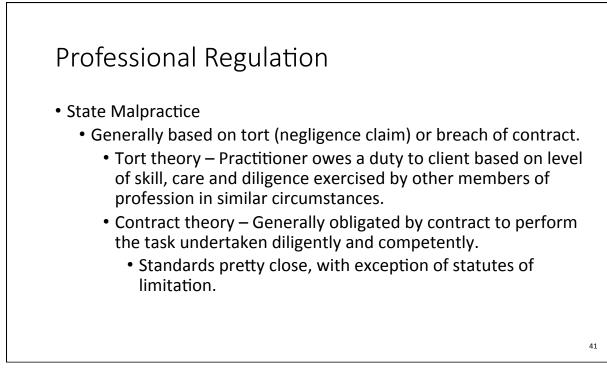


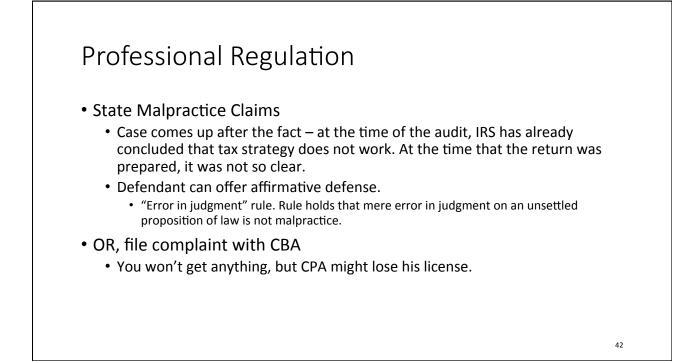
### California

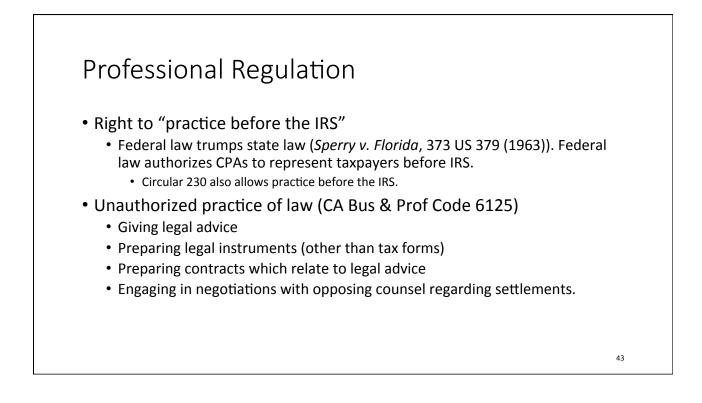
- SBE Opinions
  - SBE is administrative appellate body for appeals from FTB's denial of protests and claims for refund.
  - SBE Opinions can be issued in writing and issued as a precedential opinion, or unpublished (and nonprecedential)
    - Precedential can be cited as authority (not very many of these).
    - Nonprecedential cannot be cited as authority
    - Letter decisions Provide decision based on whether taxpayer met burden of proof no analysis of facts or legal authority
    - All SBE decisions are binding on FTB. Adverse rulings cannot be appealed by FTB.

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# Professional Regulation Publication of BOE Decisions R&TC 40 added to statute which requires BOE to publish written formal, memorandum and summary opinions on its website within 120 days of decision if amount in controversy exceeds \$500,000 (determined without interest or penalties). Applies to all taxes administered by BOE. Formal or memo opinions may be cited as precedent in proceedings before Board unless they have been de-published, overruled or superseded.

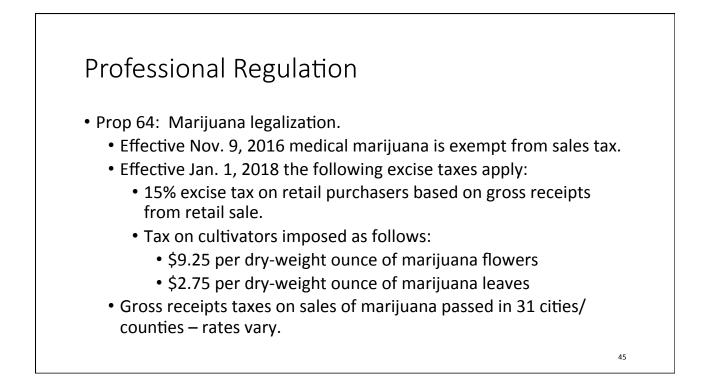


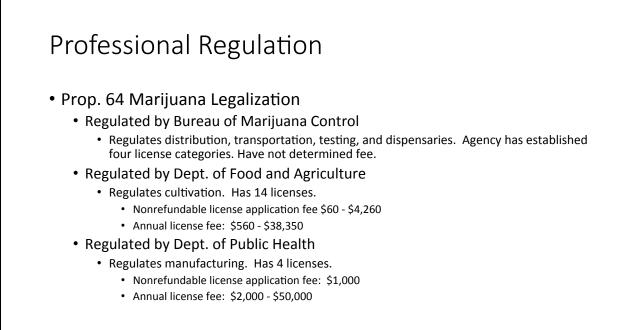


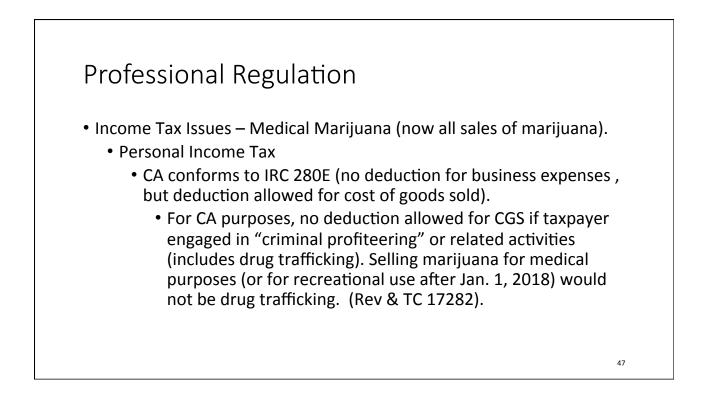


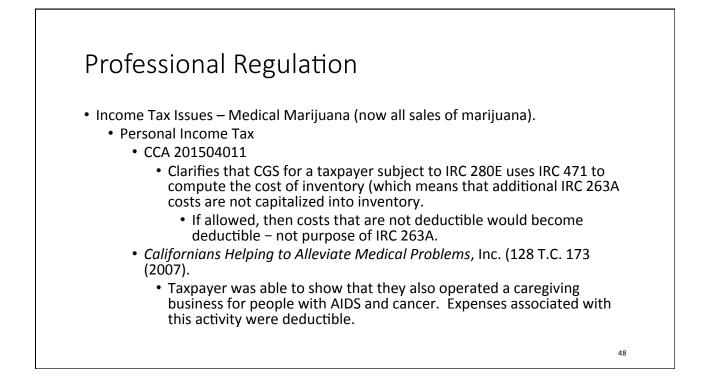


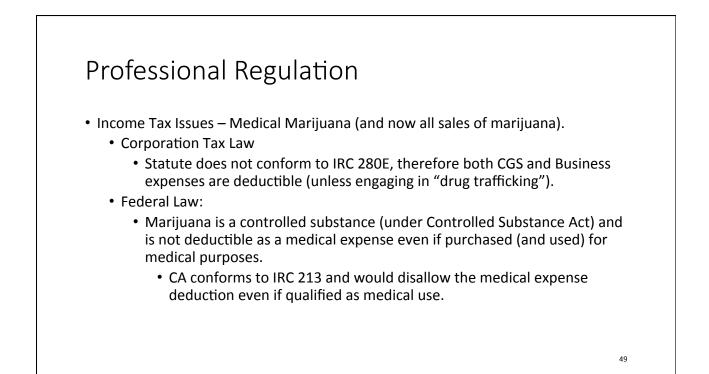
- Legalizes sale of marijuana for adults 21 years of age or older. Can possess marijuana in limited quantities, but cannot sell marijuana for recreational use until after Jan. 1, 2018.
- Prohibited while driving a car or anywhere else that smoking is prohibited.
- Federal law continues to list marijuana as a Schedule 1 Controlled Substance (or an illegal drug).

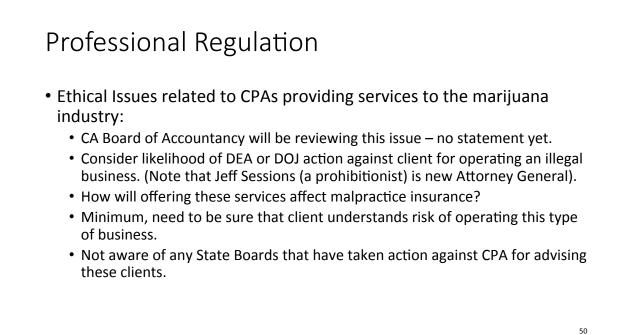


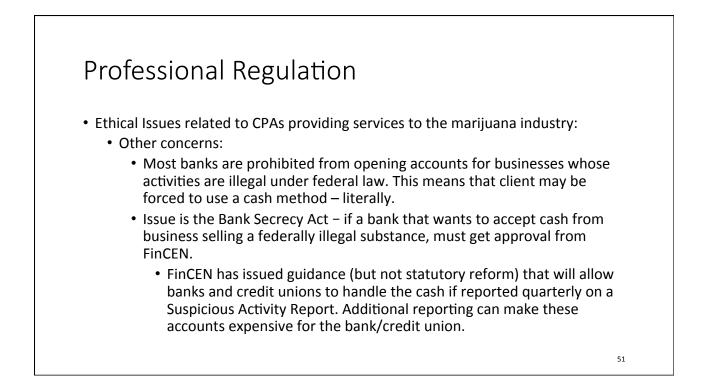












- Ethical Issues related to CPAs providing services to the marijuana industry:
  - Always have an engagement letter which states that client knows requirements of state law and intends to comply.
  - Know what is covered under your professional liability insurance policy.
  - Document all work and conversations with client.