

Office of Government Ethics

85 x 3 -- 03/08/85

Letter to an Employee dated March 8, 1985

In your letter of February 26, 1985, you requested an opinion on the applicability of Federal conflict of interest statutes and executive branch standards of conduct to an executive branch employee's preparation, with or without a fee, of income tax returns for others.

First, 18 U.S.C. § 205 prohibits, with limited exceptions, any Federal employee from representing another person before a Federal or District of Columbia agency or court on any matter in which the United States or District of Columbia is a party or has an interest. It is our understanding that by simply signing another's income tax return as the preparer, you have not yet acted as an agent, you have stated a fact. However, if the taxpayer is subsequently called to an audit, either by the Federal or District of Columbia Government, you may not act as that individual's representative in that proceeding. You may answer direct factual questions such as which taxpayer records you used to compile the figures which appear on the return, but you may not argue any theories or positions of why you used one figure rather than another. The latter would be prohibited by this statute because you would then be representing the taxpayer in the audit.

Second, 18 U.S.C. § 203 prohibits, with limited exceptions, an employee from receiving compensation for anyone else's representations to a Federal or District of Columbia agency if the United States or District of Columbia has an interest in the matter. In addition to the restrictions of section 205, this would be important to you if, for instance, you conducted your tax preparation business through a partnership, one of your partners received compensation for representing a client to a Federal or District of Columbia agency and you shared in that compensation through your partnership fee distribution agreement. Your sharing in that fee would be prohibited. If you expect to conduct your business through a partnership, you will have to establish a bookkeeping arrangement so you will not share in those fees, nor will that specific loss to you be made up in another way.

Finally, the standards of conduct applicable to you as an executive branch employee do have provisions governing outside employment and other activity. You should review those regulations for your Department and seek any necessary approvals from your ethics official before proceeding. If this outside activity is approved, please remember that in conducting this business, you must use your own time, you may not use any Government equipment or facilities, including such things as photo copy machines and secretarial services, and you may not list your Government telephone number as a contact point for your business clients.

If you have any further questions, please feel free to call my Office at 632-0569.

Sincerely,

David H. Martin
Director