Circular 230 Overview: Key Provisions and Responsibilities for Tax Professionals

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Sponsored by Small Business/ Self-Employed Division and Office of Professional Responsibility
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The Statute

- 31 U.S.C. §330 (1884)
- Authorizes regulation of representatives of persons before the Department of the Treasury

“.. a determination about anyone who practices before it to determine….”
“Fitness” to Practice

- Good character
- Good reputation
- Necessary qualifications to provide valuable service to the client
- Competency to advise and assist persons in presenting their cases

“Essentially, Circular 230 has four main parts....”
The Regulations

- 31 C.F.R. Part 10 (cir. 1886)
- Guidance for all administrative practice conduct.
- Treasury Circular No. 230 (cir. 1921 Pamphlet) – Four subparts:
  - Authority to Practice
  - Duties and Restrictions Relating to Practice
  - Sanctions for Violations
  - Disciplinary Procedures
Circular 230


• Substantial revisions as of June 3, 2011. Effective August 2, 2011.

• Form 2848 attestation.

• **Do I need one?** Yes.
Cir. 230 and OPR

- OPR Responsibility:
  - Practice Standards Oversight
  - Independent Investigations
  - Propose/Negotiate Discipline
  - Administrative Hearings & Appeals

“What does it mean to practice before the Internal Revenue Service?”
Practice

• All matters connected with a presentation to the IRS relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by the IRS

• Preparing or filing documents, corresponding and communicating with the IRS, rendering written advice, and representing a client at conferences, hearings and meetings

• Practice = All Tax Return Preparation
Procedures to ensure compliance - §10.36

• Any practitioner with principle authority (or have or share authority) for a firm’s practice preparing tax returns, claims for refunds or other documents for submission to IRS:
  – Must take reasonable steps to ensure the firm has adequate procedures in effect for all members for complying with Circular 230
  – Will be subject to discipline for failing to comply IF
Procedures to ensure compliance cont)

- Practitioner willfully fails to take prompt action and
- One or more individuals engage in pattern or practice in violation of Circular 230 or
- The practitioner knows or should have known of the pattern or practice and willfully fails to correct the noncompliance
OPR Discipline Process

• Referrals
• Evaluate for 230 violation and willful conduct
• Consider Alternative Discipline Options or Pre-allegation Letter
• Investigation
• Dispute - Due Process
• Final Agency Decision
Final Agency Decisions

• Final Agency Decisions rendered after Sept. 26, 2007 are published on the OPR webpage.

• A decision becomes the FAD
  – After ALJ Initial Decision and Order and neither party files an appeal with the AA within 30 days; or,
  – Immediately after the AA issues his or her decision in the case

• The practitioner may file a complaint against OPR and take issue with the FAD in Federal District court but the FAD becomes public, and the Decisions are published on the webpage at that point.
Discipline Options

- Reprimand (Private)
- Censure
- Suspension
- Disbarment
- Monetary Sanction (Individuals and Firms)
Key Circular 230 Provisions

• Diligence as to Accuracy (10.22)
• Due Diligence Standards – Returns/Docs (10.34)
• Negotiation of Taxpayer Checks – (10.31)
• Fees – (10.27)
• Giving False or Misleading Info (10.51(a)(4))
• Willfully Assisting, Counseling or Encouraging a Client to Evade Taxes or Payment Thereof (10.51(a)(7))
• Conflicting Interests (10.29)
Diligence as to Accuracy (10.22)

• Must exercise Due Diligence in:
  – Preparing, approving and filing tax returns, documents, affidavits etc. relating to IRS matters.
  – Determining correctness of oral/written representations made to the client or to Treasury personnel.

• Reliance on another’s work product? With reasonable care.
Standards for Tax Returns Section 10.34(a)

- May not sign a tax return or advise a position on a tax return, willfully, recklessly, or through gross incompetence if:
  - Lacks reasonable basis
  - Unreasonable position (6694(a)(2))
  - Willful attempt to understate liability (6694(b)(2)(A))
  - Reckless, intentional disregard of rules and regulations (6694(b)(2)(B))

- Patterns matter
Standards for Documents and Other Papers- 10.34(b)

- May not advise taking positions that are frivolous.
- May not advise submissions:
  - to delay or impede tax administration
  - that are frivolous
  - Containing or omitting information that demonstrates an intentional disregard of rules or regulations.
Penalties and Client Reliance- 10.34(c), (d)

- Must advise client of potential penalties and their avoidance through disclosure (10.34(c))
- Reliance on client information in good faith, without verification, is Ok, but…
  - Cannot ignore implications of other information furnished
  - Cannot ignore actual knowledge
  - Must make reasonable inquiries for incorrect, inconsistent or incomplete information (10.34(d))
- No willful blindness.
- No Don’t ask, don’t tell.
Negotiation of Taxpayer Checks

(10.31)

• Anyone subject to Circular 230 may not endorse, or otherwise negotiate, any refund check
  – No cashing
  – No endorsing
  – No depositing to trust account
  – No split electronic transfers
  – Client concurrence is irrelevant
  – IRC 6695(f) penalty
Fees (10.27)

- No Unconscionable Fees
- Contingency Fee Restrictions
  - Refer to Circular 230 § 10.27(b)(1) – (4)
Disreputable Conduct – Giving False or Misleading Info (10.51(a)(4))

• No participating in any way in the giving of false/misleading info to the Dept. of Treasury or any officer/employee thereof

• Includes:
  – Testimony
  – Federal tax returns
  – Financial statements
  – Applications
  – Affidavits, declarations, and any other document or statement, written or oral
Disreputable Conduct – Willfully Assisting an illegal plan to Evade Taxes or Payment (10.51(a)(7))

• Willfully assisting, counseling, encouraging, suggesting to a client/prospective client:
  – An illegal plan to evade Federal taxes or payment thereof
  – Violation of any Federal tax law

“You do need to pay attention”
Conflicting Interests (10.29)

- One client’s interest directly adverse to another
- Significant risk of material limitation
  - By Responsibilities to
    - another client,
    - former client,
    - third person
  - Or, by the personal interests of the practitioner
Conflicts Cont.

• May represent if:
  – **You** have reasonable belief in ability to provide competent, diligent representation to each affected client
  – Not legally prohibited
  – EACH affected client waives conflict, by giving informed consent – in writing at the time conflict is known
Complaints or Inquiries?

• Office of Professional Responsibility
  1111 Constitution Ave. N.W.
  SE:OPR  Rm. 7238
  Washington, D.C. 20224

• For more info on OPR, Circular 230 and Disciplined Practitioners visit:
  http://www.irs.gov/
  Select “Tax Professionals”
  Then “Circular 230 Tax Pros”