

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:PA:APJP:B2:ADM
Madison
POSTN-107868-06

date: March 23, 2006

to: Deputy Director
Office of Professional Responsibility

from: Special Counsel to the Associate Chief Counsel
(Procedure & Administration)

subject: Alaska Public Accountants

This memorandum responds to your inquiry regarding practice before the Internal Revenue Service (IRS) by Alaska public accountants.

Issue

Whether an individual who holds a license to practice as a public accountant in Alaska, but who is not a certified public accountant (CPA), is eligible to practice before the IRS by virtue of holding a public accountant license?

Conclusion

Yes. The statute and regulations provide that an individual who is duly qualified to practice as a CPA in any state, territory, or possession of the United States or the District of Columbia may represent a person before the IRS.

Under Alaska law, a licensed public accountant, who has a permit to engage in the practice of public accounting, has the same rights and privileges as a CPA who holds a similar permit. See generally ALASKA STAT. §§ 08.04.005-08.04.690 (2005). Thus, for purposes of Circular 230, a public accountant in Alaska is eligible to practice before the IRS by virtue of possessing a public accountant's license.

Facts

Alaska defines the "practice of public accounting" as:

[T]he offering to perform or the performance by a person holding a certified public accountant certificate or a public accountant license or a firm registered with the [Board of Public Accountancy], for a client or potential client, of a service involving the use of accounting or auditing skills; accounting or auditing skills include preparing financial statements, issuing reports on financial statements, furnishing of management,

PMTA 2010-37

financial advisory, or consulting services, preparing tax returns, or advising or consulting on tax matters.

ALASKA ADMIN. CODE tit. 12, § 04.990(7) (2006). Only individuals who have demonstrated a special competency in accountancy may practice public accountancy in the State. ALASKA STAT. § 08.04.005 (2005). The Alaska Board of Public Accountancy issues permits to engage in public accounting to two categories of individuals: CPAs and public accountants. ALASKA STAT. § 08.04.390 (2005); see also ALASKA STAT. 08.04.100 and 08.04.661 (2005).

Law and Analysis

Section 500(c) of title 5 of the United States Code sets forth the general rules for practicing before the United States administrative agencies. This section provides that an individual who is duly qualified to practice as a CPA in a state may represent a person before the IRS by filing with the agency a written declaration that he is currently qualified as provided by this section and is authorized to represent the particular person on whose behalf he acts. The regulations governing practice before the IRS (Circular 230) mirror 5 U.S.C. § 500(c). Section 10.2(b) of Circular 230 defines a CPA, in relevant part, as any person who is duly qualified to practice as a CPA in any state. Section 10.3(b) further provides that any CPA who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS by filing with the IRS a written declaration that he or she is currently qualified as a CPA and is authorized to represent the party or parties on whose behalf he or she acts.

The decision to include CPAs within the class of professionals entitled to practice before the IRS by virtue of their state professional status is discussed in H.R. Rep. No. 1141, 89 Cong. Cong., 1st Sess. (October 25, 1965). In explaining why CPAs are not subject to the IRS's admission procedures, the House noted:

[T]here is a presumption that members in good standing of the profession of . . . certified public accountancy are of good moral character, and that surveillance by . . . State associations of certified public accountants [sic] will sufficiently insure the integrity of practice by such persons before the Internal Revenue Service. The cumbersome admission procedures of the Internal Revenue Service seem unwarranted in their impact on duly qualified . . . certified public accountants.

Id. at 4.

Under Alaska law, only individuals who demonstrate a special competency in accountancy may practice public accountancy in the State. ALASKA STAT. § 08.04.005(1) (2005). The Alaska Board of Public Accountancy (the Board) assesses the qualifications of public accounting candidates and issues permits to those qualified to engage in the practice of public accounting. ALASKA STAT. §§ 08.04.005(3) and 08.04.390 (2005) Permits are issued only to holders of a certificate or license who maintain their office as required. ALASKA STAT. §§ 08.04.005(3) and 08.04.390 (2005).

Alaska defines “certificate” for these purposes as a certificate as a certified public accountant.¹ ALASKA STAT. § 08.04.680(2)(2005). Similarly, “license” means a license as a public accountant. ALASKA STAT. § 08.04.680(3) (2005).

The State of Alaska stopped granting public accountant licenses to qualified new applicants on June 29, 1980. See ALASKA STAT. § 80.04.661 (2005). However, persons licensed as public accountants on or before June 29, 1980, may continue to practice public accounting under the conditions imposed by the statute and regulations on that date subject to the provisions of chapter 4, title 8 of the current Alaska Statutes. ALASKA STAT. § 08.04.661 (2005). Section 08.04.390 of chapter 4, title 8 of the Alaska Statutes currently and on June 29, 1980, requires the Board to issue permits to engage in the practice of public accounting to a holder of a certificate or license who maintains his office as required. The Alaska Statutes currently and on June 29, 1980, does not differentiate between the permit to engage in public accounting issued to a licensed public accountant and a CPA. See generally ALASKA STAT. §§ 08.04.005-08.04.690 (2005).

Only those individuals holding a permit to practice public accounting may hold themselves out to the public as qualified for the practice of public accounting in the State. ALASKA STAT. §§ 08.04.500 and 08.04.520 (2005). The Board renews permits to engage in the practice of public accounting to a CPA or a public accountant upon application, provided the CPA or public accountant has completed 80 hours of continuing education. ALASKA ADMIN. CODE tit. 12, § 04.300(1) (2006).

The Board may discipline public accountants and CPAs alike or revoke their licenses to practice public accountancy for any number of enumerated violations. ALASKA STAT. § 08.04.450 (2005).

Accordingly, while the State of Alaska no longer qualifies new applicants as public accountants, it will renew public accountant permits of those individuals who held public accountant licenses on or before June 29, 1980, provided that these individuals meet the same continuing education requirements imposed on CPAs.² Public accountants must also comply with the same ethical standards and remain subject to the same disciplinary actions as CPAs. Alaska law provides that public accountants have the same rights and privileges as CPAs. Thus, a person who holds a license as a public accountant and a current Alaska public accountant’s permit, is, for practical purposes, a CPA, and is, therefore, eligible to practice before the IRS.

¹ The Board issues a CPA certificate to any applicant who has satisfied the State’s good character, education, experience, examination, and fee payment requirements. ALASKA STAT. §§ 08.04.100-08.04.130 (2005).

² According to data received from the Board, there are three remaining licensed public accountants, one of which has an active license. Alaska law does not require inactive CPAs and public accountants to obtain continuing education. See ALASKA STAT. § 08.04.410 (2005).

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If a disclosure question arises, please contact this office at (202) 622-3400.

cc: Associate Chief Counsel (General Legal Services)
Attn: Kirsten Witter