

IRS News Release

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IRS and the Treasury Department Amend Circular 230 to Promote Ethical Practice by Tax Professionals

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WASHINGTON — As part of an ongoing effort to improve ethical standards for tax professionals and to curb abusive tax avoidance transactions, the Treasury Department and the Internal Revenue Service today issued final regulations amending Treasury Department Circular 230.

Circular 230 is applicable to attorneys, accountants and other tax professionals who practice before the IRS. The revisions to Circular 230 provide standards of practice for written advice that reflect current best practices and are intended to restore and maintain public confidence in tax professionals. These revisions ensure that tax professionals do not provide inadequate advice, and increase transparency by requiring tax professionals to make disclosures if the advice is incomplete.

“These new standards send a strong message to tax professionals considering selling a questionable product to clients,” said IRS Commissioner Mark W. Everson. “The new provisions give us more tools to battle abusive tax avoidance transactions and to rein in practitioners who disregard their ethical obligations.”

Ensuring that attorneys, accountants and other tax practitioners adhere to professional standards and follow the law is one of the IRS’ top four enforcement goals. The revisions to Circular 230 represent a key component of the strategy to achieve this goal.

As part of this broader effort to strengthen professional standards, in 2003, Everson appointed Cono Namorato, a former Justice Department prosecutor, as the Director of the IRS Office of Professional Responsibility (OPR). OPR investigates allegations of misconduct by tax practitioners and enforces the standards of practice in Circular 230. Everson and Namorato have taken a number of steps to increase the effectiveness of OPR, including doubling the size of its staff.

“The playing field for tax advisors has changed with these standards for tax opinions, the new penalties that Congress recently enacted and other steps the IRS has taken to detect and deter abusive transactions,” said Namorato. “Most professionals share our concern about the egregious behavior of some of their colleagues and we appreciate the efforts of responsible practitioners to promote ethical practice. We are taking steps to ensure that all practitioners live up to their professional obligations.”

The final regulations provide best practices for all tax advisors, mandatory requirements for written advice that presents a greater potential for concern, and minimum standards for other advice. The mandatory requirements for written advice that presents a greater potential for concern prohibit practitioners from providing advice that, for example, relies on incorrect factual assumptions or representations, does not consider all relevant facts, or fails to analyze important legal issues. The minimum standards for other advice will give practitioners flexibility to exercise professional judgment to meet specific client needs.

“These revisions to Circular 230 strike an appropriate balance between tightening practitioner standards and minimizing burden on everyday advice,” said Acting Assistant Secretary for Tax Policy Greg Jenner. “These rules target the types of written advice that present a significant cause for concern and avoid undue interference with the practitioner-client relationship.”

The Treasury and IRS also separately issued proposed regulations regarding written advice concerning tax-exempt bonds that are similar to the standards for written advice in the final regulations. The proposed standards take into account the special characteristics of the market for tax-exempt bonds while ensuring that professionals who provide advice concerning tax-exempt bonds adhere to standards of practice that are comparable to the standards applicable to other tax professionals. Until the proposed regulations are finalized, practitioners who provide advice concerning tax-exempt bonds will be subject to certain minimum standards.