

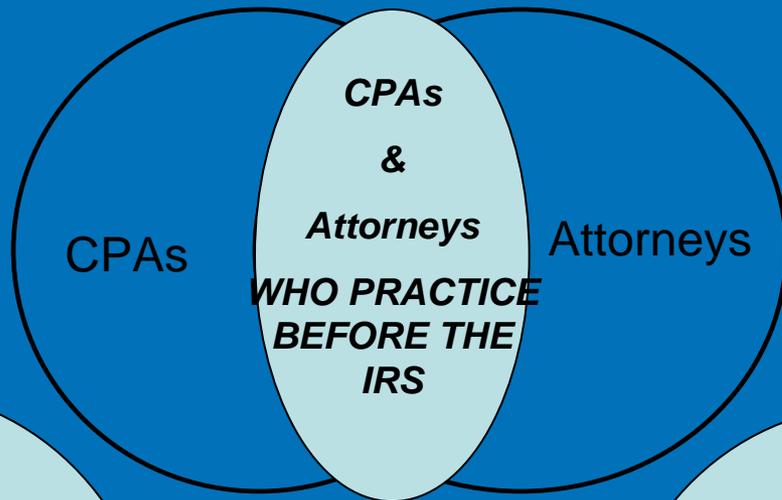
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Beyond the Basics

Circular 230

OPR Jurisdiction



**ENROLLED AGENTS
ENROLLED RETIREMENT
PLAN AGENTS
AND
ENROLLED ACTUARIES**

**2011 OPR Jurisdiction:
PAID TAX RETURN PREPARERS
Prop. Reg.1.6109-2**

**APPRAISERS
WHO
SUBMIT
APPRAISALS
SUPPORTING
TAX POSITIONS**

Circular 230 Duties

- Exercise Due Diligence. §10.22
- No Unreasonable Delay. §10.23
- No Conflicting Interests Without Consent. §10.29
- No Signing Returns, Advising on Positions or Submissions in a Manner which Violates. §10.34

Circular 230 Duties

- No Providing False or Misleading Information. §10.51(a)(4)
- Willful failure to file a Federal tax return, or willfully evading any Federal tax assessment or payment. §10.51(a)(6)
- Willfully assisting a client to violate any Federal tax law. §10.51(a)(7)

Circular 230 Duties

- Engaging in Contemptuous Conduct. §10.51(a)(12)
- Giving False or Misleading Opinions (Oral or Written). §10.51(a)(13)
- Willfully Failing to Sign a Tax Return you prepared when required. §10.51(a)(14)

Due Diligence Case Scenario

- Practitioner, John, uses standard commercial software to prepare tax returns.
- He uses the program Questionnaire for clients to complete along with submitting their tax data.
- One question asked is: “Do you have a foreign bank account?”
- When clients answer “no”, John checks the appropriate box on Schedule B.
- Some clients are US residents with elderly parents or relatives in other countries (one client has a POA on an account in another country, but has never used it).

Due Diligence Case Scenario

- Has John exercised “due diligence” as required under section 10.22? Why? Why Not?
- What else might John do to insure he is preparing accurate tax returns?
- What advice might John give to the client with the POA?



Conflicting Interests Case Scenario

- Practitioner, uses a tax software program and questionnaire and reviews the information with clients, H&W.
- H&W answer “no” to the home buyer credit question regarding purchase of a principal residence within the past three years.
- Practitioner included a First Time Homebuyer Credit on their return based on the answer given by the couple.
- IRS denies the credit and proposes to assess interest and a negligence penalty because a second Form 1098 was issued to W.

Conflicting Interests Case Scenario

- H&W demand that Practitioner “fix” their tax problem or reimburse them for the loss of the tax credit and for the interest and penalties assessed because W inherited the home for which the second 1098 was issued.
- Practitioner agrees to resolve the couple’s tax dispute and begins to prepare a protest of the proposed assessment.



Conflicting Interests Case Scenario

- Several days later, Practitioner receives a letter advising him that IRS proposes to assess a preparer penalty for his preparation of H&W's Form 5405.
- Can Practitioner continue to represent both H&W?
- Can Practitioner provide “competent and diligent representation” for all concerns?

Potential Client Case Scenario

- Potential Client (“PC”) receives Notice of Intent to Levy.
- PC, a school teacher, owes \$85,000 from a failed consulting business.
- PC asks Practitioner to settle her tax debt - or at least buy time.
- PC tells Practitioner she earns \$60,000, has \$80,000 equity in her home and a mortgage of \$1,000/month, a late model car, savings accounts totaling \$8,000 and \$3,000 in credit card debt.

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Potential Client Case Scenario

- Practitioner tells PC she will not qualify for an Offer in Compromise because her assets/earnings exceed her debts.
- Shortly after meeting with Practitioner, PC transferred most of her assets to her children by sale for which promissory notes were issued or by gift.
- Later, Practitioner agrees to represent PC based on PC's current economic circumstances.

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Potential Client Case Scenario

- Practitioner prepares and files an OIC for PC based on her “changed” circumstances.
- Any consequences to Practitioner under Circular 230? Why or why not?



Tax Return Preparer Regulation Update

- What You Should Know ...



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