

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

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to: Deputy Director
Office of Professional Responsibility

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

subject: South Dakota Public Accountants

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

Issue

Whether individuals who hold current public accountant permits in South Dakota, but who are not certified public accountants, are eligible to practice before the IRS by virtue of their public accountants' status?

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 South Dakota law, a registered and licensed public accountant has the same rights and privileges as a certified public accountant. Thus, for purposes of Circular 230, a public accountant registered and licensed in South Dakota is eligible to practice before the IRS by virtue of his public accountant's license.

Facts

Two categories of individuals may practice public accountancy in South Dakota. CPAs and public accountants. Currently there are seven public accountants licensed in the state, who are listed on the South Dakota Board of Accountancy web site at <http://www.state.sd.us/dol/boards/accountancy/Annual%20Registry%20December%202005.htm>.

Law and Analysis

PMTA 2010-31

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 in 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 Service'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 South Dakota law, only individuals possessing a license or certificate to practice public accountancy issued by the Board may issue a report on financial statements or offer to render any attest or compilation services in the state¹. SDCL § 36-20B-54². The Board issues licenses to practice public accountancy to CPAs and public accountants. Only CPAs and PAs may use such titles and designations. SDCL §§ 36-20B-55 and 36-20B-56.

A CPA is an individual who has received from the South Dakota Board of Accountancy (the Board) a certificate of certified public accountant. SDCL § 36-20B-1(2) (2005).

¹ CPAs licensed in other states and foreign countries whose principal place of business is not in South Dakota with substantial equivalence with the CPA licensure requirements of SDCL 36-20B have all of the same privileges of licensees of South Dakota without the need to obtain a license, but are required to notify the board of their intent to perform accounting services in South Dakota and pay a fee. ARSD 20:75:03:14 and SDCL 36-20B-30 (2005).

² Nonlicensees may perform other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. They may also prepare financial statements and issue nonattest transmittals or information thereon which do not purport to be in compliance with the Statements and Standards for Accounting and Review Services (SSARS).

CPA certificates are generally issued to individuals who have paid the prescribed fees and have met the requirements of good moral character, education, examination, and experience. SDCL § 36-20B-13 (2005).

A public accountant is any person holding a public accountant license issued pursuant to provisions of prior law. SDCL § 36-20B-1(15) (2005). The state has not admitted new applicants as public accountants since June 30, 1984.³ SDCL § 36-18 repealed by SL 1984, ch 254, §32. See also, History of Public Accounting Legislation in South Dakota, <http://www.state.sd.us/dol/boards/accountancy/Annual%20Register%20-%20History.pdf>. However, any person holding a license as a public accountant or permit to practice public accountancy on June 30, 1984 was entitled to have such permit renewed and to engage in the practice of public accountancy to the same extent as other holders of such permits. SDCL § 36-20A-17 repealed by SL 2002, ch 179, §1. and SDCL § 36-20B-38 (2005). South Dakota law provides that public accountants who hold valid registrations and permits to practice may perform attest and compilation services to the same extent as CPAs, in addition, they may use the title, public accountants and PA. SDCL 36-20B-38 (2005).⁴

The South Dakota Codified Laws provide for the issuance of one-year certificates to engage in the practice of public accountancy in the state. SDCL § 36-20B-23 (2005) and SDCL § 36-20B-38 (2005). Only those persons holding a license to practice public accounting may hold themselves out to the public as being qualified for the practice of public accounting in the state. SDCL §§ 36-20B-55, 36-20B-56, 36-20B-57, and 36-20B-58 (2005). Permits to engage in the practice of public accounting may be renewed upon application provided the CPA or public accountant has completed 120 hours of continuing education in a three-year renewal period. SDCL § 36-20B-27 (2005).

Public accountants, like CPAs, may be disciplined and potentially lose their permit to practice accountancy for any failure to comply with or violation of the conduct provisions in the South Dakota Codified Laws. SDCL § 36-20B-40 (2005).

³ SDCL § 36-20-18 (1977) permitted the licensing of public accountants in South Dakota. Chapter 36-20 of the South Dakota Codified Laws was repealed by SL 1984, ch 254, § 32 (HB 1187). This same legislation codified new SDCL § 36-20A, Public Accountancy Laws Revised. Under SDCL § 36-20, no new public accountant licenses were issued. However, SDCL § 36-20A-17 did allow for public accountants licensed as of June 30, 1984 to renew their permits and to practice public accountancy to the same extent as other holders of such permits. SDCL § 36-20A-1 to SDCL §36-20A-8.2 and SDCL § 36-20A-10 to SDCL § 36-20A-30 were repealed by SL 2002, ch 179, § 1, and replaced by SDCL § 36-20B, the current Public Accountants legislation. SDCL § 36-20B-38 allows any person who on July 1, 2002 held a license or permit as a public accountant under prior law to renew such license or permit and to perform attest and compilation services to the same extent as CPAs.

⁴ We were advised by the South Dakota Board of Accountancy that the Board does not consider the repeal of SDCL § 36-20A-17 to be a substantive change. The prior law was considered vague. The practice of public accountancy includes performing many services such as tax preparation, bookkeeping, attestation, and compilation services. The Board does not regulate many services which are considered the practice of public accountancy such as tax preparation or bookkeeping work, and thus, any individual could perform such services without a license from the Board. Instead, the Board only certifies PAs and CPAs to perform attestation and compilation services, and only those licensed individuals may perform such services. Thus, the language in current § 36-20B-38 is more specific in granting PAs the same rights and privileges as CPAs as the Board is only entitled to issue licenses to practice these services.

In summary, while the state of South Dakota no longer qualifies persons as public accountants, it will renew public accountant permits of those individuals who held the authority to practice accounting in South Dakota as of June 30, 1984, provided that these individuals meet the same continuing education requirements imposed on CPAs. Public accountants can practice public accounting and perform public accounting services to the same extent as CPAs. Public accountants also must comply with the same ethical standards and are subject to the same disciplinary actions as CPAs.

Accordingly, South Dakota law provides that public accountants have the same rights and privileges as CPAs. Thus, a person who holds authority as a public accountant and a current South Dakota public accountant's license, is, for practical purposes, a CPA, and is, therefore, eligible to practice before the IRS.

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

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