

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

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to: Acting Director
Office of Professional Responsibility
Attn: Michael Hahn

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

subject: North Dakota Public Accountants

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

Issue

Whether individuals who hold current public accountant permits in North 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 North Dakota law, a licensed public accountant has the same rights and privileges as a certified public accountant. Thus, for purposes of Circular 230, a licensed public accountant who holds a valid permit to practice public accounting in North 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 North Dakota, CPAs and licensed public accountants (LPAs). Currently there are approximately 30 LPAs in the state.

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 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 North Dakota law, no person or firm that is not a licensee¹ may practice or offer to practice public accountancy or issue a report on financial statements of any other person, firm, organization, or governmental unit. N.D. CENT. CODE §43-02.2-12(1)(2005). "Practice of" or "practicing" public accountancy means the performance or the offering to perform by a person or firm holding out to the public as a licensee, for a client or potential client, services involving the use of accounting or auditing skills including the issuance of reports on financial statements, but not including management advisory, financial advisory, or consulting services, bookkeeping services, or the preparation of tax returns or the furnishing of advice on tax matters unless provided by a licensed firm. N.D. CENT. CODE §43-02.2-02(7)(2005). The North Dakota Board of Accountancy (the Board) issues permits to practice public accountancy only to CPAs and LPAs. See N.D. CENT. CODE §§43-02.2-04 and 43-02-07 (2005). A person or firm not holding a valid certificate issued by the Board may not use or assume the title or designation "certified public accountant" or "CPA", and a person or firm may not assume or use the title or designation "licensed public accountant" or "LPA" unless the person or firm is registered as such by the Board². N.D. CENT. CODE §43-02.2-12(2)-(7) (2005)³.

¹ A "licensee" is a holder of a certificate, license or permit issued under chapter 43-02.2 of the Century Code or prior law. N.D. CENT. CODE §43-02.2-02(5) (2005).

² CPAs licensed in other states whose principal place of business is not in North Dakota with substantial

A CPA is an individual who has received from the Board a certificate of certified public accountant. N.D. CENT. CODE §43-02.2-02(2) (2005). CPA certificates are issued to individuals who have paid the prescribed fees and have met the requirements of good moral character, education, examination, and experience. N.D. CENT. CODE §43-02.2-04 (2005).

LPAs are persons who on the effective date of the Accountancy Act of 1999 held licensed public accountant licenses issued under prior law. N.D. CENT. CODE §43-02.2-07 (2005). North Dakota last accepted initial applications for a public accountant license and last initially licensed LPAs on June 30, 1976. N.D. CENT. CODE §43-02.1-04 (1991) repealed by SL 1993, ch. 417, §20. In addition, the Board granted initial LPA licenses to any person enrolled in an accredited college or university who registered with the Board a declaration of his intent to qualify for a license as a public account, provided the declaration was received by the Board by June 30, 1976 and the applicant met all of the qualifications to become a LPA on or before June 30, 1980. Thus, the State has not admitted new applicants as LPAs since June 30, 1976 or “student applicants” as LPAs since June 30, 1980. *Id.* However, any person holding a public accountant’s license or permit to practice public accountancy on June 30, 1976 or June 30, 1980 is entitled to have such license or permit renewed.

The North Dakota Century Code provides for the issuance of one-year certificates or permits to engage in the practice of public accountancy in the State. N.D. CENT. CODE §§43-02.2-04(11) and 43-02.2-07 (2005). Only those persons holding a valid certificate or permit to practice public accounting may hold themselves out to the public as being qualified for the practice of public accounting in the State. N.D. CENT. CODE §43-02.2-12(2)-(7) (2005). Permits to engage in the practice of public accounting may be renewed upon application, provided the CPA or LPA has completed 120 hours of continuing education in a three-year renewal period. N.D. ADMIN. CODE 3-03-01-01 and 3-03-03-01 (2005).

LPAs, like CPAs, must observe all of the provisions of the code of ethics and 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 North Dakota Codified Laws. N.D. CENT. CODE §43-02.2-08 (2005) and N.D. ADMIN. CODE 3-04-01-02 (2005).

As mentioned above, the Board solely monitors the practice of public accounting, which generally includes the performance of services involving the use of accounting or auditing skills including the issuance of reports on financial statements. The Board

equivalence with the CPA licensure requirements of N.D. CENT. CODE §43-02.2-4 (2005) have all of the same privileges of licensees of North Dakota without the need to obtain a license, but are required to notify the board of their intent to perform accounting services in North Dakota and pay a fee. N.D. CENT. CODE §43-02.2-04.1 (2005).

³ Nonlicensees may perform other services involving the use of accounting skills, including management advisory services, financial advisory services, or consultation services, bookkeeping services, or the preparation of tax returns, or the preparation of financial statements without the issuance of reports thereon. See e.g., N.D. CENT. CODE §§43-02.2-02(7) and 43-02.2-12(1) (2005).

does not monitor other services involving the use of accounting skills, such as management, financial, or consultation advisory services, bookkeeping services, tax return preparation, or preparation of financial statements without the issuance of reports thereon. As a result, any individuals or firms may perform these services without a license from the Board. Thus, CPAs and LPAs licensed by the Board have the same rights and privileges.

In summary, while North Dakota no longer qualifies new applicants as LPAs, the State will renew licensed public accountant permits of those individuals who held the authority to practice accounting in North Dakota as of June 30, 1976 or June 30, 1980, provided that these individuals meet the same continuing education requirements imposed on CPAs. LPAs can practice public accounting and perform public accounting services to the same extent as CPAs. LPAs also must comply with the same ethical standards and are subject to the same disciplinary actions as CPAs. Accordingly, North Dakota law provides that LPAs have the same rights and privileges as CPAs. Thus, a person who holds authority as a public accountant and a current North 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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