



IRS Nationwide Tax Forum | 2020

Federal Ethics for Tax Professionals:
Office of Professional Responsibility
and Circular 230

Learning Objectives

- Statutory and Regulatory Authority
- Office of Professional Responsibility (OPR) and Circular 230
- OPR's Oversight Responsibilities
- Contact Information and Resources



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STATUTORY AND REGULATORY AUTHORITY

Statutory Authority

- 31 USC § 330 (1884) authorizes:
 - The regulation of the practice of representatives of persons before the Department of the Treasury, including the IRS, and determinations of practitioner "fitness" to practice. (31 USC §330(a)).
 - Types of disciplinary action, to include monetary penalties. (31 USC §330(b)).
 - The regulation of certain appraisers. (31 USC §330(c)).
 - Setting standards for certain written advice. (31 USC §330(d)).

Statutory Authority (Cont.)

- Fitness to Practice
 - Good character
 - Good reputation
 - Necessary qualifications to provide valuable service to the client
 - Competency to advise and assist persons in presenting their cases

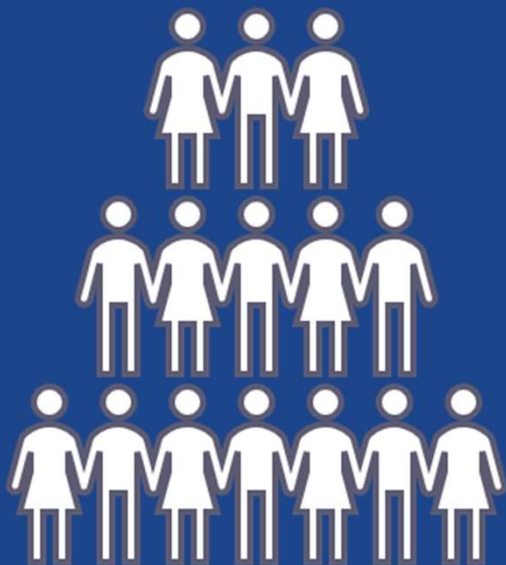
Statutory Authority (Cont.)

- "Practice" before the IRS is defined in § 10.2(a)(4):
 - All matters under laws or regulations administered by the IRS relating to a taxpayer's rights, privileges, or liabilities
 - E.g., preparing, filing, corresponding, communicating, written advice (including emails), advocating/representing, giving appraisals for tax positions
 - Not *mere* tax return preparation

Statutory Authority (Cont.)

- Examples of Practice
 - Representing in an audit or before IRS Collections, or appearing before IRS Appeals
 - Preparing documents for submission to the IRS
 - Advising clients regarding tax positions
 - Written opinion (advice to clients regarding transactions)

Statutory Authority (Cont.)



The regulated community is principally:

- Attorneys
- CPAs
- All Enrolled Agents, Enrolled Retirement Plan Agents, Enrolled Actuaries
- Annual Filing Season Program Record of Completion Holders
- Appraisers who submit appraisals supporting tax positions

Regulatory and Other Authority

- 31 CFR Subtitle A, Part 10
 - Treasury Circular No. 230
 - Originally published 1921
 - Latest revision issued 6/9/14 (eff. 6/12/14 (TD 9668))
- 31 CFR 10.1(a)(1)
- Delegation Order 25-16 (Rev. 1)
 - - Rev. Proc. 81-38
 - - Rev. Proc. 2014-42



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OFFICE OF PROFESSIONAL RESPONSIBILITY AND CIRCULAR 230

Office of Professional Responsibility

- The Office of Professional Responsibility:
 - Administers the laws and regulations governing practice of tax professionals before the IRS;
 - Interprets and applies the standards of practice for tax professionals in Circular 230 in a fair and equitable manner;
 - Investigates allegations of misconduct by practitioners in their practice before the IRS and imposes discipline sanctions if warranted; and
 - Supports the IRS's strategy to enhance enforcement of the Code by ensuring tax practitioners adhere to professional standards and follow the law.

Office of Professional Responsibility (Cont.)

- Practice Standards Oversight
 - Advising taxpayers on filing positions or transactions
 - During taxpayer representation before IRS
 - On practitioner's tax return
 - External misconduct – moral turpitude
- Independent Investigations
- Propose/Negotiate Discipline
- Administrative Hearings & Appeals

Return Preparer Office (RPO)

- Provides comprehensive oversight and support of tax professionals to improve taxpayer compliance
- Oversees preparer tax identification numbers (PTINs), enrollment programs, IRS approved continuing education providers
- Administers the Annual Filing Season Program (AFSP) for tax return preparers

Treasury Circular No. 230

- Circular 230 is the document containing the statute and regulations detailing a tax professional's duties and obligations while practicing before the IRS
- It authorizes specific sanctions for violations of the duties and obligations
- It describes the procedures that apply to administrative proceedings for discipline

Treasury Circular No. 230 (Cont.)

- Subpart A – Rules governing authority to practice (licensing, renewals, continuing education)
- Subpart B - Duties and restrictions relating to practice before the IRS
- Subpart C - Sanctions for violations of Circular 230
- Subpart D – Rules applicable to disciplinary proceedings (due process)



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OPR'S OVERSIGHT RESPONSIBILITIES

Standards Relating to Advising Taxpayers

Duty re: Client's Error/Omission – §10.21

- Know client has not complied with US revenue laws or made an error in, or omission from, any return, affidavit, or other document client submitted or executed under US revenue laws.
 - Duty to promptly inform client of noncompliance, error, or omission and advise client regarding consequences under the Code and regulations of that noncompliance, error, or omission.

Standards Relating to Advising Taxpayers

Diligence as to Accuracy – §10.22

- Must exercise due diligence in:
 - Preparing, approving, and/or filing returns, documents, affidavits, etc. relating to IRS matters
 - Determining correctness of oral/written representations made to the client or Treasury personnel
 - No willful blindness!
- Reliance on another's work product?
 - Other professionals — with reasonable care

Standards Relating to Advising Taxpayers

Standards for Tax Returns— §10.34(a)

- May not sign a tax return or advise a position on a tax return, willfully, recklessly, or through gross incompetence if:
 - Lacks a reasonable basis
 - Unreasonable position (§ 6694(a)(2))
 - Willful attempt to understate liability (§ 6694(b)(2)(A))
 - Reckless, intentional disregard of rules and regulations (§ 6694(b)(2)(B))
- Patterns matter

Standards Relating to Representing Taxpayers

Duty to Provide Information – §10.20

- Upon a proper and lawful request for records or information from IRS, duty to promptly submit requested information unless in good faith reasonably believe information sought is privileged.
- If requested information not in your or your client's possession, must promptly inform the IRS and provide any information regarding who has possession of the requested information.

Standards Relating to Representing Taxpayers

Conflicting Interests – §10.29

- A conflict of interest exists if:
 - One client's interest directly adverse to another
 - Significant risk of material limitation
 - By responsibilities to
 - another client,
 - former client,
 - third person

OR

 - By the personal interest of the practitioner

Standards Relating to Representing Taxpayers

Conflicting Interests (Cont.) – §10.29

- May represent if:
 - You have a reasonable belief in your ability to provide competent, diligent representation to each affected client; and,
 - Not legally prohibited; and,
 - Each affected client waives conflict, by giving informed consent *in writing at the time (i.e., within 30 days) conflict is known.*
 - Must retain consents for 36 months after representation ceases and provide the consents to the IRS upon request.

Standards Relating to Advising Taxpayers

Standards for Documents and Other Papers –

§10.34(b)

- May not advise taking frivolous positions
- May not advise submissions:
 - To delay or impede tax administration
 - That are frivolous
 - Containing or omitting information that demonstrates an intentional disregard of rules or regulations

Standards Relating to Advising Taxpayers

Penalties and Client Reliance – §10.34(c),(d)

- Must advise client of potential penalties and their avoidance through disclosure
- Reliance on client information in good faith without verification is permissible, but:
 - Cannot ignore implications of other information furnished
 - Cannot ignore actual knowledge
 - Must make reasonable inquiries for incorrect, inconsistent information
- No willful blindness

Standards Relating to Advising Taxpayers

Competence— §10.35

- A practitioner must have the knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.
 - Must know when you are not competent
- Can provide competent representation by researching and educating self on the issue or by consulting with another tax professional who has established competence in the field.

Standards Relating to Advising Taxpayers

Liability Under §10.36

- A responsible practitioner must take reasonable steps to ensure adequate procedures for compliance with Circular 230 are in place and properly followed.
 - Liable for failure to take steps if violations occur, or
 - For failing to act if knew or should have known of violations

Standards Relating to Representing Taxpayers

Giving False or Misleading Info – §10.51(a)(4)

- No participating in any way in the giving of false/misleading information to the Department of Treasury or any officer/employee thereof. Includes:
 - Testimony
 - Tax returns
 - Financial statements
 - Applications
 - Affidavits, declarations, and any other document or statement (written or oral)

Standards Relating to Representing Taxpayers

Willful Assistance with Violation of Federal Tax Laws – §10.51(a)(7)

- Willfully assisting, counseling, encouraging, suggesting to a client/prospective client:
 - An illegal plan to evade Federal taxes or payment thereof
 - Violation of any Federal tax law

Standards Relating to Practitioner Tax Noncompliance

Willful Noncompliance – §10.51(a)(6)

- Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.

Standards Relating to External Misconduct

- Conviction of any criminal offense under the Federal tax laws (§10.51(a)(1)).
- Conviction of any criminal offense involving dishonest or breach of trust (§10.51(a)(2)).
- Conviction of any felony under Federal or State law for which the conduct involved renders the practitioner unfit to practice (§10.51(a)(3)).
- Disbarment or suspension from practice as an attorney or CPA (§10.51(a)(10), §10.82(b)(1)).
- Conviction of any crime under Title 26, any crime involving dishonesty or breach of trust, or any felony for which renders the practitioner unfit to practice (§10.82(b)(2)).



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INVESTIGATIVE AND DISCIPLINARY PROCESS

OPR Referral & Disciplinary Process

- Sources of Referrals and Complaints
- Evaluation of Potential Violations of Circular 230
- Options for an appropriate sanction or alternatives to discipline

Available Sanctions and Discipline Options

- Soft Letter (private)
- Letter of Reprimand (private)
- Censure
- Suspension
- Disbarment
- Disqualification (appraisers)
- Monetary Penalty



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CONTACT INFORMATION & RESOURCES

Contacting OPR

- Questions? Contact OPR at:
 - Efax: (855) 814-1722
 - Office of Professional Responsibility
1111 Constitution Ave., NW
SE:OPR Rm. 7238
Washington, DC 20224
- For more info on OPR and Circular 230 visit <http://www.irs.gov/>
Search: "Circular 230 Tax Professionals"

Resources and Guidance

- [Treasury Department Circular No. 230 \(Rev. 6-2014\)](#)
- [Publication 947, Practice Before the IRS and Power of Attorney](#)
- [Form 2848, *Power of Attorney and Declaration of Representative*](#)
- [Loving v. IRS, 742 F.3d 1013 \(DC Cir. 2014\)](#)
- [Annual Filing Season Program \(AFSP\) \(Rev. Proc. 2014-42\)](#)

Resources and Guidance (Cont.)

- [The OPR Website](#)
- [News & Updates from the Office of Professional Responsibility](#)
- [Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases](#)
- [Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service](#)
- [Search for Disciplined Practitioners](#)