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**Guidance on Restrictions during  
Suspension or Disbarment from Practice  
Before the Internal Revenue Service**



The Office of Professional Responsibility (OPR) administers and enforces the regulations governing practice before the IRS. These regulations are set out at 31 CFR Subtitle A, Part 10, and are reprinted as Treasury Department Circular No. 230, available at [Office of Professional Responsibility and Circular 230 | Internal Revenue Service \(irs.gov\)](https://www.irs.gov/office-of-professional-responsibility-and-circular-230).

Under section 10.79 of Circular 230, an individual is not permitted to practice before the IRS during their suspension or disbarment from practice imposed in “the final decision in a case” instituted by the OPR against the individual under Subpart D of Circular 230, Rules Applicable to Disciplinary Proceedings, or imposed through a consent agreement entered into between the individual and the OPR. The “decision in a case” is final (i.e., a Final Agency Decision) either 30 days after issuance of an Initial Decision and Order by an administrative law judge (ALJ) that is not appealed by either party or, if appealed, when the Treasury Appellate Authority enters a decision resolving the appeal(s).

An individual whom the OPR indefinitely suspended under the expedited suspension authority in section 10.82 is also precluded from practicing before the IRS while suspended.

Section 10.2(a)(4) states that “Practice before the Internal Revenue Service”:

**C**omprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

The following guidance is for individuals under suspension or disbarment from practice, to inform them of the specific restrictions the sanctions impose upon their professional activities and conduct and that of others with whom they may interact.

## **A SUSPENDED OR DISBARRED INDIVIDUAL MAY NOT—**

### **1. Prepare or file documents—other than tax returns (and ordinary refund claims)—or correspond or communicate with the IRS about a taxpayer’s federal tax matters.**

The restriction applies whether the individual signs the document or correspondence and regardless of whether the individual personally files or directs another person to file documents or correspondence with the IRS. The restriction applies to all means of communication made by the individual to advance a taxpayer’s interests under laws or regulations administered by the IRS. The restriction includes person-to-person conversations, faxes, e-mails, other written materials submitted to the IRS, telephone calls, and the use of IRS chatbots. The restriction does not apply to merely preparing tax returns, except as set forth in a civil injunction, sentence upon a criminal conviction, or consent agreement.

**2. Render written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion.**

This restriction applies regardless of whether the written advice is a part of a larger document or a component of a set of documents and irrespective of whether the individual signs the written advice. The written advice need not be intended for submission to the IRS so long as the written advice serves as a basis for a position taken on a return or any other document that is submitted to the IRS.

**3. Represent a client before the IRS at conferences, hearings, and meetings.**

This restriction applies to all forms of conferences, hearings, and meetings, including those conducted in-person, by telephone, or through teleconferencing or videoconferencing capabilities. The restriction bars the individual from representing the taxpayer, that is, from advocating, disputing, arguing, or otherwise negotiating on a taxpayer's behalf concerning the taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS, including provisions outside the Internal Revenue Code (Title 26) that the IRS is authorized to administer (e.g., foreign bank account reporting under Title 31 of the U.S. Code, and certain provisions of the Affordable Care Act).

This restriction applies whether the taxpayer is a paying client or not and also applies to all of the limited forms of practice defined in section 10.7(c) of Circular 230 and the Conference and Practice Requirements in Subpart E of the procedural regulations in 26 CFR Part 601 (sections 601.501–509).<sup>1</sup> Further, disbarred and suspended individuals are ineligible to participate in the IRS's Annual Filing Season Program under Revenue Procedure 2014-42, 2014-29 I.R.B. 192.

The restriction does not affect a taxpayer's right to the services of the individual as a witness or any right of the taxpayer to be accompanied by the individual to conferences, hearings, or meetings. However, the OPR will consider any instances of the individual's advocating or negotiating on the taxpayer's behalf at conferences, hearings, or meetings to be attempted practice in violation of the individual's suspension or disbarment.

**4. Execute waivers, consents, or closing agreements; receive a taxpayer's refund check; or sign a tax return as an agent on behalf of a taxpayer.**

These acts require the filing of a Form 2848 or other power of attorney authorizing a representative to perform them, as such they are considered to be practice before the IRS and a suspended or disbarred individual is prohibited from performing these acts.

**5. File powers of attorney with the IRS.**

The OPR considers the submission of a power of attorney attempting to appoint a suspended or disbarred individual as a representative as an attempt by that individual to practice in violation of the individual's suspended or disbarred status. An individual seeking to practice before the IRS as a taxpayer's designated representative must declare on Part II, Form 2848, Power of Attorney and Declaration of Representative, that the representative is not under suspension or disbarment from practice before the IRS. The OPR refers false declarations made in powers of attorney to the Treasury Inspector General for Tax Administration for criminal investigation.

**6. Assist or offer to assist another person if the assistance relates to a matter constituting practice before the IRS or enlist another person for the purpose of aiding and abetting a suspended or disbarred individual's practice before the IRS.**

Sections 10.24(a) and 10.51(a)(11) of Circular 230 prohibit individuals who are eligible to practice before the IRS from knowingly accepting assistance from, or assisting, or aiding or abetting a suspended or disbarred individual in matters constituting practice. The OPR will consider both a suspended or disbarred individual's and any other individual's or employer's participation in such relationships to be separate violations of sections 10.24(a) and 10.51(a)(11) and evidence of disreputable conduct under section 10.51(a).

**7. State or imply that the individual is eligible to practice before the IRS.**

The OPR considers express or implied statements of practice eligibility by a suspended or disbarred individual made to a client, a prospective client, or in any other context intended to solicit business to be false, misleading, and deceptive and to constitute a violation of section 10.30 of Circular 230. Such misrepresentations also constitute disreputable conduct under section 10.51(a)(5).

Under section 10.6(j)(4), individuals may not use the terms "enrolled agent" or "enrolled retirement plan agent," the designation "EA" or "ERPA," or any other form of reference indicating eligibility to practice before the IRS while disbarred or suspended. This prohibition applies to, among other things, business cards, business stationery, and any online presence, including websites.

In evaluating an individual's petition for reinstatement to practice at a future time, the OPR will consider the degree to which the individual has complied with the terms of a consent agreement and the degree to which, during the suspension or disbarment, the individual has complied with the rules of conduct in Circular 230.<sup>2</sup> The OPR considers an individual's practice, or attempt to practice, while suspended or disbarred as an aggravating factor to be weighed in deciding the individual's reinstatement to practice.

## **SUBJECT TO THE RULES OF CONDUCT CONTAINED IN CIRCULAR 230, A SUSPENDED OR DISBARRED INDIVIDUAL MAY —**

**1. Generally prepare tax returns.**

Subject to exceptions stated in this paragraph, a suspended or disbarred individual generally may prepare or assist in preparing for compensation all or substantially all of a tax return for a taxpayer, including an amended tax return, or an ordinary refund claim. An ordinary refund claim is a claim that is prepared and filed before any formal IRS scrutiny of the income or other tax for the tax year(s) or period(s) that are the subject of the claim, such as an examination of the original tax return. The individual may also sign a tax return as the preparer.

An individual may not, however, do any of the following:

- Prepare or assist in preparing for compensation other documents pertaining to a taxpayer's tax liability for submission to the IRS.

<sup>2</sup> The standard for reinstatement, as prescribed in section 10.81(a) of Circular 230, is that the OPR must be "satisfied that the petitioner is not likely to engage thereafter in conduct contrary to the regulations in this part, and that granting such reinstatement would not be contrary to the public interest."

- Prepare or assist in preparing for compensation a tax return or claim for refund when the individual is enjoined from doing so by a court order or when the activities are prohibited in a criminal sentence or a consent agreement.
- Represent taxpayers before the IRS in any capacity. This restriction includes representation before the Examination Division, the Taxpayer Advocate Service, or IRS Customer Service concerning a tax return the suspended or disbarred individual prepared or signed as the preparer. See restriction number 3, “Represent a client at conferences, hearings, and meetings,” in the preceding section of this guidance for a complete description of the loss of limited practice rights while suspended or disbarred.

## **2. Represent themselves concerning any IRS matter.**

Authorized under section 10.7(a) of Circular 230.

## **3. Appear before the IRS as a trustee, receiver, guardian, administrator, executor, conservator, or other fiduciary if duly qualified/authorized as such under the law of the relevant jurisdiction.**

Authorized under section 10.7(e). Fiduciaries should file Form 56, Notice Concerning Fiduciary Relationship.

## **4. Appear as a witness for a taxpayer.**

Authorized under section 10.8(b) of Circular 230 and Revenue Procedure 68-29, 1968-2 C.B. 913. A witness is limited to providing factual information. A witness may not advocate positions on behalf of any taxpayer on issues arising during a tax controversy matter.

## **5. Provide information at the request of the IRS or any of its officers or employees.**

Authorized under section 10.8(b) and 26 CFR 601.501(b)(13).

## **6. Receive information concerning a taxpayer from the IRS under a valid tax information authorization (TIA).**

A suspended or disbarred individual’s designation on Form 8821, Tax Information Authorization, or an online TIA created using IRS Tax Pro Account entitles the individual to receive taxpayer information but does not entitle them to practice before the IRS on behalf of that taxpayer.

## **7. Be a Third Party Designee**

The individual can be named on a Form 1040 series or other tax return as a taxpayer’s “Third Party Designee.” Third Party Designees may interact with the IRS in specific limited ways (short of any representation), such as answering questions that arise during the processing of the taxpayer’s return or contacting the IRS to ask about the status of a refund. See the applicable form’s instructions for a complete description of the role of a Third Party Designee.

## **8. Participate in the Statutory and Regulatory Rulemaking Process.**

Authorized under section 10.7(b).