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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG-122380-02]

RIN 1545-BA72

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document provides advance notice of proposed rulemaking to amend the regulations governing practice before the Internal Revenue Service, which appear in the Code of Federal Regulations and in pamphlet form as Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the Service. This document invites individuals and organizations to submit comments on revising Circular No. 230 to address certain issues regarding standards of practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and appraisers who represent taxpayers before the Service.

DATES: Submit comments on or before February 17, 2003.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-122380-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044.

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:ITA:RU (REG-122380-02), Courier's Desk, Internal Revenue Service,

1111 Constitution Avenue NW., Washington, DC. Alternatively, persons may submit comments electronically via the IRS Internet site at: www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning issues for comment, Richard Goldstein at (202) 622-7820 or Brinton T. Warren (202) 622-4940; concerning submissions of comments, LaNita Van Dyke, (202) 622-7180; (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department and, after notice and an opportunity for a proceeding, to suspend or disbar from practice before the Treasury Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330. Pursuant to section 330, the Secretary, in Circular No. 230 (31 CFR part 10), published regulations that authorize the Director of Practice to act upon applications for enrollment to practice before the Service, to institute proceedings for suspension or disbarment from practice before the Service, to make inquiries with respect to matters under the Director's jurisdiction, and to perform such other duties as are necessary to carry out these functions.

The regulations were most recently amended on July 26, 2002, (67 FR 48760) to clarify the general standards of practice before the Service. In the preamble to those amendments to the regulations, the Treasury Department and the Service stated their intention to issue a second notice of proposed rulemaking to re-propose amendments to regulations governing standards for tax shelter opinions. The Treasury Department and

the Service also stated their intention to issue an advanced notice of proposed rulemaking covering additional nonshelter matters pertaining to practice before the Service.

Contemporaneously with the efforts to address issues affecting practice, the Treasury Department and the Service are reorganizing the Office of the Director of Practice to enhance its effectiveness. As part of the reorganization, the authority to supervise the Office of the Director of Practice has been delegated to the Office of the Senior Counselor to the Commissioner. The authority to make the agency decision in disciplinary proceedings when decisions by Administrative Law Judges are appealed has also been delegated to the Senior Counselor to the Commissioner. The Office of Senior Counselor to the Commissioner observes an “ethical wall” ensuring that the official who makes the agency decision in such disciplinary proceedings is not exposed to these cases prematurely. Another step in the reorganization is the possible renaming of the Office of the Director of Practice to the Office of Professional Responsibility. It also is contemplated that the Office of Senior Counselor to the Commissioner will have a centralized role in the selection of the Director of Practice. The Treasury Department and the Service are seeking public comment on this reorganization.

Special Analyses

It has been determined that this advance notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866.

Request for Comments

The Treasury Department and the Service invite comments on the following matters.

Director of Practice

1. Whether § 10.1 should be revised to rename the Director of Practice as the Director of the Office of Professional Responsibility.
2. Whether the authority to appoint the Director of Practice should be delegated to the office or person who supervises the Director of Practice. If not, to whom should the Secretary delegate the authority to appoint the Director of Practice?
3. Whether the review of an Administrative Law Judge's decision under § 10.78 should be delegated to the office or person who supervises the Director of Practice. If not, to whom should the Secretary delegate the authority under § 10.78 to review the Administrative Law Judge's decision in disciplinary proceedings when these decisions are appealed.

Definition of Practice and Who May Practice

1. Whether the definition of practice before the Service and the definition of practitioner in § 10.2 should be modified to specifically provide that return preparation by an individual not described in § 10.3(a) through (d) ("unenrolled return preparer") is practice before the Service and that an unenrolled return preparer is a practitioner under Circular 230.
2. Whether § 10.3(b) should be revised to permit licensed accountants, and certified internal auditors, who are not certified public accountants, to practice before the Service.

3. Whether § 10.7(c)(1)(viii) should be revised to authorize the Director of Practice to modify the scope of limited practice by unenrolled return preparers, without further amendment to the regulations.

4. Whether the regulations should specifically provide the Director of Practice with authority to determine eligibility for limited practice by unenrolled return preparers under § 10.7(c)(1)(viii).

Enrolled Agents and Eligibility for Enrollment

1. Whether Enrolled Agents should be allowed to refer to themselves as "Licensed Tax Professionals" or another specified designation determined by the Service, in addition to or instead of the Enrolled Agent designation, to more fully describe the nature of the professional services that they provide.

2. Whether the regulations should set forth specific examples of acceptable descriptions of an Enrolled Agent's practice for advertisements.

3. Whether the Director of Practice should be authorized to determine, without requiring further amendment of the regulations, standards for the continuing professional education requirements of Enrolled Agents.

Sanctions and Disciplinary Proceedings

1. Whether the regulations should be amended to authorize a practitioner and the Director of Practice to enter into settlement agreements, with such agreements enforceable through the expedited procedures of § 10.82.

2. Whether the definition in the regulations of disreputable conduct should be amended to specifically include the willful failure of a practitioner who is a preparer to sign a return.

3. Whether, in order to facilitate the timely adjudication of disciplinary proceedings instituted under § 10.60, the regulations should be amended to provide that the failure of a practitioner to answer a complaint constitutes an automatic default in the proceeding, subject to a showing of good cause.

4. Whether the regulations should be amended to provide the parties to a proceeding instituted under § 10.60 the opportunity to obtain discovery through means such as interrogatories, requests for production of documents, and requests for admissions, in addition to depositions. Whether the regulations should define what discovery should be permitted. Whether the regulations should place limits on discovery.

5. Whether the protection afforded in the current regulation -- that a party in a disciplinary proceeding is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts -- is sufficient, or whether changes should be made to afford greater protection in a disciplinary proceeding, including the opportunity to question, in the presence of the Administrative Law Judge, any person whose statement is offered by the opposing party.

Contingent fees

1. Whether contingent fees should be permitted in conjunction with a request for a private letter ruling or other prefiling document.

2. Whether the regulations should continue to permit a practitioner to charge a contingent fee for preparing, or for any advice rendered in connection with a position taken or to be taken on, an amended return or claim for refund.

3. Whether the prohibition on contingent fees should be expanded to permit contingent fees only for amended returns or claims for refund when the client's taxable income on the amended return or claim for refund is less than \$50,000 (or another amount determined with reference to financial need).

Confidentiality Agreements

1. Whether the regulations should prohibit practitioners from entering into agreements with clients that, in violation of applicable state professional rules or applicable state law, restrict a practitioner from providing relevant tax advice to other similarly situated taxpayers.

2. Whether the regulations should prohibit, irrespective of applicable state professional rules or applicable state law, the agreements identified above.

/s/ Pamela F. Olson

Assistant Secretary for Tax Policy