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What Every Tax Return Preparer Needs to Know

Key Circular 230
Provisions

Office of Professional Responsibility
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Quick Overview

- 31 U.S.C. §330 (1884)
- 31 C.F.R. Subtitle A, Part 10 (1886)
- Treasury Department Circular 230 (1921)
- 31 C.F.R. 10.1 (2011)
- Delegation Order 25-16 (2012)





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Key Circular 230 Provisions

- Diligence as to Accuracy (10.22)
- Unconscionable & Contingent Fees (10.27)
- Taxpayer Refunds (10.31)
- Due Diligence Standards for Returns and Other Docs (10.34)
- Competence (Proposed 10.35)





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Key Circular 230 Provisions (Cont.)

- Procedures to Ensure Compliance (10.36(b))
- Giving False or Misleading Info to IRS (10.51(a)(4))
- Assisting, Counseling, encouraging Taxpayer Violations of Tax Law or Taxpayer Evasion (10.51(a)(7))
- Contemptuous conduct (10.51(a)(12))





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More Info?

- Office of Professional Responsibility
1111 Constitution Ave. N.W.
SE:OPR Rm. 7238
Washington, D.C. 20224
- Information on OPR, Circular 230 and Discipline visit:
<http://www.irs.gov/Tax-Professionals/Circular-230-Tax-Professionals>





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APPENDIX





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Diligence as to Accuracy (10.22)

- Must exercise Due Diligence in:
 - Preparing, approving and filing tax returns, documents, affidavits etc. relating to IRS matters.
 - Determining correctness of oral/written representations made to the client or to Treasury personnel.
- Reliance on Another's Work Product?
With Reasonable Care.





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Fees (10.27)

- No Unconscionable Fees
- Contingency Fee Restrictions
 - Preparation of Original Return = No
 - Exam/Disputes re: original return = Yes
 - Original Amended Return = No
 - Exam/Disputes re: amended return = Probably (120 day rule)
 - Penalties & Interest = Yes
 - Litigation = Yes



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Negotiation of Taxpayer Checks (10.31)

- Anyone subject to Circular 230 may not endorse, or otherwise negotiate, any refund check
 - No cashing
 - No endorsing
 - No depositing to trust account
 - No split electronic transfers
 - Client concurrence is irrelevant
 - IRC 6695(f) penalty





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Standards for Tax Returns

Section 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 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





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Standards for Documents and Other Papers- 10.34(b)

- May not advise taking Positions that are Frivolous.
- 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.





Disclosure re: Unreasonable Positions (10.34(c))

- Advised position?
- Prepared or signed return?
- Submitting docs/other papers to IRS?
- Then-
 - Must Advise Client of Potential Penalties and their Avoidance through Disclosure

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Reliance on Client Data- 10.34(d)

- Reliance on Client Information in good faith, without verification, is OK, but...
 - Cannot ignore implications of other information furnished
 - Cannot ignore actual knowledge
 - Must make reasonable inquiries for incorrect, inconsistent or incomplete information
- No Willful Blindness.





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Proposed §10.35

- A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.
- See ABA Model Rule 1.1, “Competence”
- AICPA Code of Professional Conduct Article V, “Due Care”.





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Procedures to ensure compliance §10.36(b)

- Any practitioner who has (or practitioners who have or share) **principal authority and responsibility** for overseeing a firm's practice of preparing tax returns, claims for refunds, or other documents for submission to the Internal Revenue Service must take **reasonable steps** to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of **complying with Circular 230**. Any practitioner who has (or practitioners who have or share) this principal authority **will be subject to discipline for failing to comply** with the requirements of this paragraph **if--**



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Procedures to ensure Compliance (cont)

- (1) The practitioner through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with Circular 230; or
- (2) The practitioner knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, who does not comply with Circular 230, and the practitioner, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.



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Disreputable Conduct – Giving False or Misleading Info (10.51(a)(4))

- No participating in any way in the giving of false/misleading info to the Dept. of Treasury or any officer/employee thereof
- Includes:
 - Testimony
 - Federal tax returns
 - Financial statements
 - Applications
 - Affidavits, declarations, and any other document or statement, written or oral





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Disreputable Conduct – Willfully Assisting an illegal plan to Evade Taxes or Payment (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





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Contemptuous conduct (10.51(a)(12))

- Abusive Language
- False Accusations or Statements (knowingly)
- circulating, publishing malicious or libelous matter





- **1.2.52.15 (07-16-2012) Delegation Order 25-16**

- **Authority of the Office of Professional Responsibility to Perform Certain Functions Concerning Practice before the Internal Revenue Service**
- **Authority:** To exercise responsibility for all matters related to practitioner conduct, discipline and practice before the Internal Revenue Service (IRS) under 31 CFR part 10 (Circular 230), unless otherwise delegated.

This authority includes but is not limited to:

- Receiving and processing referrals regarding allegations of misconduct under Circular 230; initiating all disciplinary proceedings against individuals or entities relating to allegations or findings of practitioner misconduct consistent with the applicable disciplinary rules under Circular 230;
- Making final determinations on appeal from return preparer eligibility or suitability decisions; imposing and releasing expedited practitioner suspensions; recommending and imposing all sanctions for violations under Circular 230 and accepting consents to be sanctioned under the same;
- Making determinations on whether to appeal Administrative Law Judge decisions and orders in Circular 230 proceedings; issuing special orders as proper and necessary under Circular 230 and reviewing and determining petitions seeking reinstatement to practice.

Note:

- This authority does not include the authority to redetermine or collect a practitioner's tax liability.
- **Delegated To:** Director, Office of Professional Responsibility.
- **Redelegation:** This authority may be redelegated to IRS Office of Professional Responsibility employees.
- **Sources of Authority:** 31 USC 330; 31 CFR part 10.
- To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby affirmed and ratified.
- **Signed:** Douglas H. Shulman, Commissioner, Internal Revenue

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OPR Guidance

- Rights and Responsibilities of practitioners in Disciplinary Cases: <http://www.irs.gov/pub/irs-utl/rightsandresponsibilitiesofpractitioners.pdf>
- Guidance on Restrictions During Suspension or Disbarment: http://www.irs.gov/pub/irs-utl/guidance_on_restrictions_during_suspension_or_disbarment.pdf
- Information (resources) for Tax Professionals: <http://www.irs.gov/Tax-Professionals/Enrolled-Agents/Information-for-Tax-Professionals>





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OPR Guidance (cont)

- Circular 230 Webinar-
Soup to Nuts:
<http://www.irsvideos.gov/Circular230OverviewWebinar/>
- FBAR Responsibility:
http://www.irs.gov/pub/irs-utl/fbar_document_on_irs_gov_ver_08-04-10.pdf





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Relevant Recent OPR Cases

- Tewolde: <http://www.irs.gov/uac/Newsroom/IRS-Office-of-Professional-Responsibility-Disbars-Return-Preparer-Accused-of-Filing-False>Returns>
- Bryson: http://www.irs.gov/pub/irs-utl/bryson_decision_redacted-version%201.pdf
- Tionson: [http://www.irs.gov/pub/irs-utl/Tionson%20-%20IRS_Decision%20on%20Tionson%20Motion%20for%20Default%20\(FINAL\)%20-%204-3-13.pdf](http://www.irs.gov/pub/irs-utl/Tionson%20-%20IRS_Decision%20on%20Tionson%20Motion%20for%20Default%20(FINAL)%20-%204-3-13.pdf)
- Walker: <http://www.irs.gov/pub/irs-utl/Walker%20FAD%202-18-13.pdf>



Relevant Recent OPR Cases (cont)

- Bohn: <http://www.irs.gov/pub/irs-utl/Morton%20Bohn%20SJ%20Order%20-FINAL%20Redacted.pdf>
- Gee: http://www.irs.gov/pub/irs-utl/opr-edgar_h_gee_jr-final_order.pdf
- Tedder: <http://www.irs.gov/pub/irs-utl/GTedder%20Default%20Order%20-%20Redacted%20Version.pdf>

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