



IRS Nationwide **TaxForum** | **2022**

Professional Responsibility Obligations when Practicing before the IRS: OPR and Circular 230

Thursday, August 4, 2022

Start Time: 11:00am Eastern / 10:00am Central
9:00am Mountain / 8:00am Pacific

Note: You should be hearing music while waiting for webinar to start.

Having Technical Issues?

View the “Technical Issues” troubleshooting guide in the Materials drop-down menu on the left side of this page



TaxForum

IRS Nationwide

2022

Today our webinar will:

- Identify your role as a practitioner and your obligations to your clients.
- Recognize common violations of Circular 230, including personal tax compliance, and how to avoid them.
- Learn best practices to ensure due diligence, return standards, and data security.

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)).



What is Fitness to Practice?

- 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



OPR Jurisdiction and Statutory Authority

OPR's jurisdiction extends to those who practice before the IRS.



“Practice” is defined as all matters connected with a presentation to the IRS or any of its officers or employees relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by the IRS. Includes:

Preparing and filing documents

Corresponding and communicating with the IRS

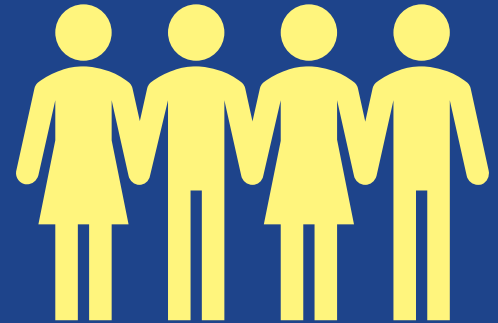
Rendering written advice

Representing a client at conferences, hearings, meetings

Not mere tax return preparation

Statutory Authority

- The regulated community is principally:
 - Attorneys
 - CPAs
 - 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 (commonly called "Treasury Circular No. 230")
 - Originally published 1921; latest revision 6/9/14 (eff. 6/12/14 (TD 9668))
- 31 CFR 10.1(a)(1) provides for OPR
- Delegation Order 25-16 (Rev. 1)
 - Rev. Proc. 81-38
 - Rev. Proc. 2014-42



Office of Professional Responsibility

- Administers the laws and regulations governing practice of tax professionals before the IRS
- Practice standards oversight
- Supports the IRS's goal to enhance enforcement of the Internal Revenue Code by ensuring tax practitioners adhere to professional standards and follow the law



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

Treasury Department
Circular No. 230
(Rev. 6-2014)
Catalog Number 16586R
www.irs.gov

Regulations Governing Practice before
the Internal Revenue Service

Department
of the
Treasury

Title 31 Code of Federal Regulations,
Subtitle A, Part 10,
published (June 12, 2014)

Internal
Revenue
Service



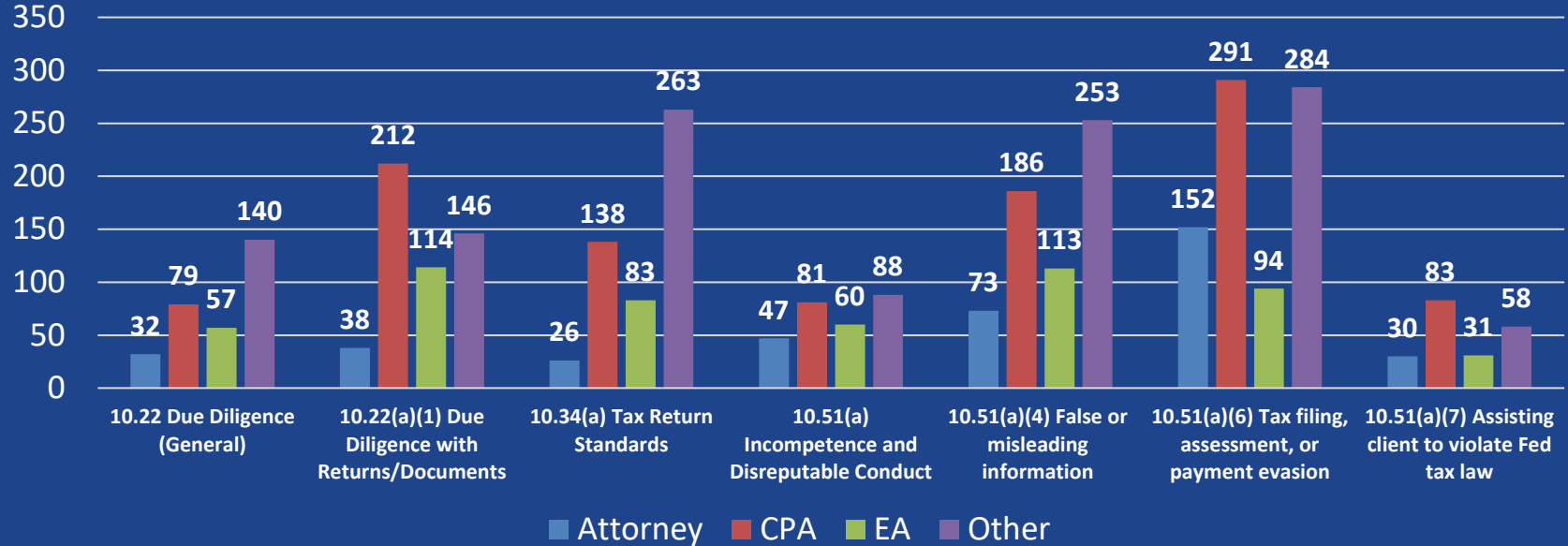
Treasury Circular No. 230 (Contd.)

- Circular 230 authorizes specific sanctions for violations of the duties and obligations
- Circular 230 describes the procedures that apply to administrative proceedings for discipline



Top Practitioner Violations

FY2014 – FY2021





§ 10.22 Diligence as to Accuracy

- A practitioner must exercise due diligence –
 - In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to IRS matters;
 - In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and
 - In determining the correctness of oral or written representations made by the practitioner to clients regarding any matter administered by the IRS.



§ 10.22 Diligence as to Accuracy (Contd.)

- Relying on information furnished by clients (§ 10.34(d))
 - Generally, may rely in good faith without verification upon information furnished by the client.
 - Can not ignore the implications of information furnished to or actually known by the practitioner.
 - Must make reasonable inquiries if the information furnished appears incorrect, incomplete, or inconsistent with other facts or assumptions.
- Willful blindness violates a practitioner's due diligence responsibilities under Circular 230.



§ 10.22 Diligence as to Accuracy (Contd.)

- Reliance on another professional's work (§ 10.34(d))
 - May rely on their work unless you have reason to question it.
 - No willful blindness!
 - Under the safe harbor provision in 10.22, deemed to have exercised reasonable due diligence if used reasonable care in selecting, engaging, supervising, training, overseeing, or evaluating the individual's work relying on.
 - “Reasonable care” is based on the facts and circumstances of the situation.



§ 10.34(a) Standards for Tax Returns

- 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
 - Willful attempt to understate liability
 - Reckless, intentional disregard of rules and regulations
- Patterns matter!

Standards for Tax Returns – §10.34(a) (Contd.)

Reasonable Basis (25%)

When a reasonable and well-informed analysis by a person knowledgeable in the tax law concludes there is at least a 25% likelihood a position would be upheld on its merits. MUST be paired with disclosure.

Realistic Possibility of Success (33%)

When a reasonable and well-informed analysis by a person knowledgeable in the tax law concludes there is at least an approximately one-in-three likelihood a position would be upheld on its merits.

Tax Return Position

Substantial Authority

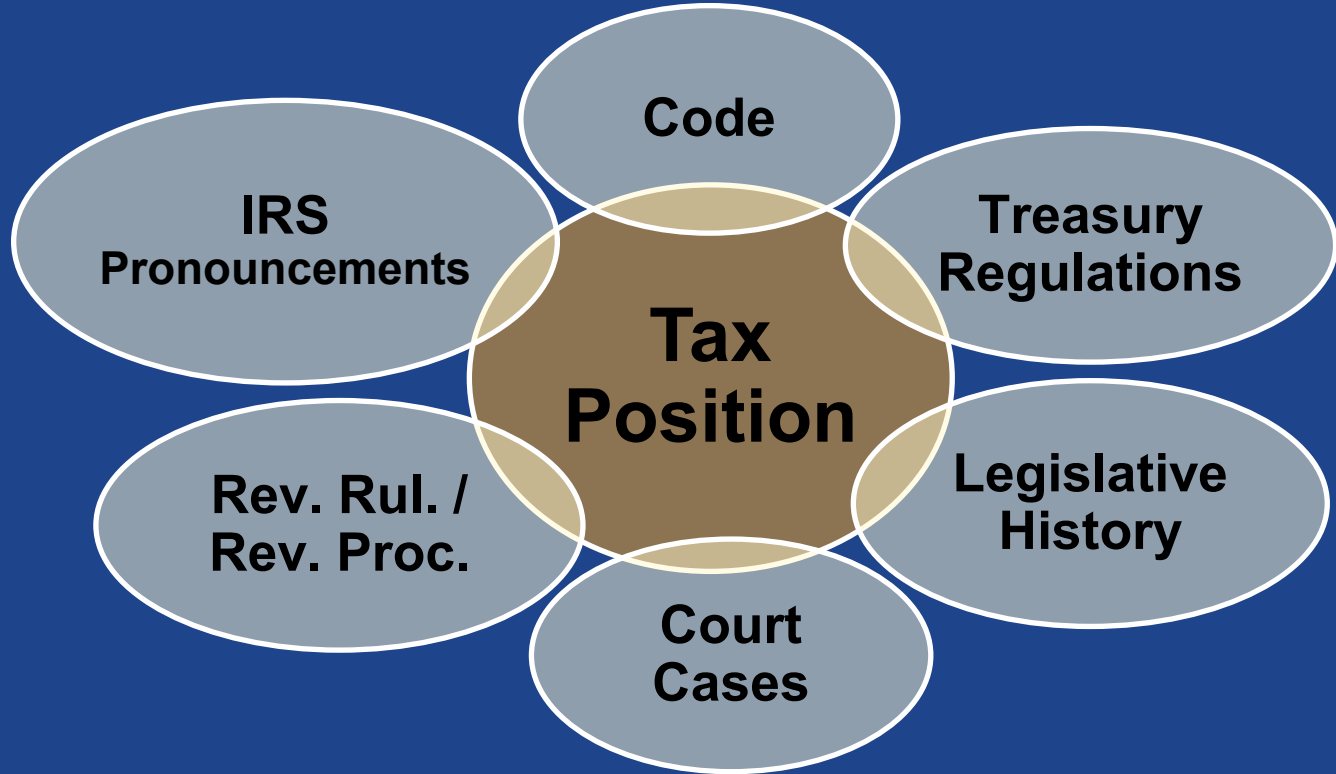
When a reasonable and well-informed analysis by a person knowledgeable in the tax law concludes there is at least a greater than 40% but less than 50% likelihood a position would be upheld on its merits

More Likely Than Not (>51%)

When a reasonable and well-informed analysis by a person knowledgeable in the tax law concludes there is at least a greater than 50% likelihood a position would be upheld on its merits.



Standards for Tax Returns – §10.34(a) (Contd.)





§10.34(b) Standards for Documents and Other Papers

- May not advise taking frivolous positions
- May not advise submissions:
 - To delay or impede tax administration;
 - Conversely, a practitioner must not interfere with any lawful IRS attempt to obtain information unless, in good faith, practitioner reasonably believes the information is privileged. (§ 10.20)
 - That are frivolous;
 - Containing or omitting information that demonstrates an intentional disregard of rules or regulations.



§ 10.34(c) Standards and Advising Clients on Penalties

- Must advise client of potential penalty exposure regarding:
 - A position taken on the return if the practitioner advised the client regarding the position OR the practitioner prepared or signed the return
 - Any document, affidavit or other paper submitted to the IRS
- Must also advise client of penalty avoidance through disclosure



§ 10.51(a) Incompetence and Disreputable Conduct

- Incompetence
 - A practitioner must have the knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. (§ 10.35)
 - Know when you are not competent
 - ✓ Competence through research and education
 - ✓ Consulting with another tax professional
 - Failing to recognize or comply with ethic responsibilities
 - ✓ § 10.29 Conflicts of Interest
 - ✓ Reasonable belief

§ 10.51(a) Incompetence and Disreputable Conduct (Contd.)

- Disreputable conduct includes:
 - Conviction of any criminal offense under 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 where conduct involved renders 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 that renders the practitioner unfit to practice (§10.82(b)(2))



§ 10.51(a)(4) Giving False or Misleading Information

- No participation 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)



§10.51(a)(6) Willful Noncompliance by Practitioner

- 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.
 - When a referral is made to OPR, *the practitioner's tax compliance is always checked.*



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

- 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



Best Practices (§ 10.33)

- To ensure you are in compliance with the standards of practice under Circular 230 and to avoid a referral to OPR, adhere to best practices in practicing before the IRS.
 - Engagement agreements
 - Historical tax information
 - Get to know your client
 - Contemporaneously document questions and taxpayer responses.



Best Practices (§ 10.33) (Contd.)

- Confirm substantiation (e.g., books, records, etc.)
- Think "substantial authority" or "reasonable basis" with disclosure (i.e., Form 8275).
- Don't take unnecessary risks--loss of livelihood and damage to reputation and integrity is not worth it.
- Duty re: Client's Error/Omission (§ 10.21)



Best Practices – Technology & Cybersecurity

- Assess Risks
 - Security protocols in electronic system
 - Server locks
 - Guidance on phishing / malware schemes
 - Laptop and mobile security
 - Develop email delivery procedures that comply with federal and state laws
 - Conduct a computer network survey to determine potential security issues
 - E.g., antivirus software, firewalls, security patches, scan engines
 - Social and professional networking sites



Best Practices – Technology & Cybersecurity (Contd.)

- Security Protocols
 - Don't collect more client “Personally Identifiable Information” (PII) than is necessary for business
 - Don't retain PII longer than necessary and/or legally required for business purposes
 - Protect PII collected, used, disclosed and retained (e.g., locked room or file cabinets, put files away at COB)
 - Restrict access to PII only to individuals who have a business need to access such information
 - Dispose of PII appropriately (e.g., on-site shredding, wiping old hard drives)
 - Instill awareness and train employees on proper handling of PII
 - Have policies and procedures in place of what to do in case of data breach

Disciplined Practitioner List

Where to Search for Disciplined Tax Professionals

<https://www.irs.gov/tax-professionals/search-for-disciplined-tax-professionals>



OPR's disciplinary look-up contains searchable information regarding censures of practitioners for Circular 230 misconduct and suspensions and disbarments of individuals from practice before the IRS.



Contact & Referrals to OPR

- Office of Professional Responsibility
1111 Constitution Ave., NW
SE:OPR Rm. 7238
Washington, DC 20224
Efax: (855) 814-1722
- Visit <http://www.irs.gov/> and search *Circular 230 Tax Professionals*
- Referrals
 - To make a referral regarding a return preparer, use Form 14157.
 - For practitioners covered under Circular 230, you can send a fax to OPR's eFax.



Resources

- Treasury Department Circular No. 230 (Rev. 6-2014)
- IRS Pub. 947, *Practice Before the IRS and Power of Attorney*
- IRS Pub. 4557, *Safeguarding Taxpayer Data: A Guide for Your Business*
- Form 2848, *Power of Attorney and Declaration of Representative*
- IRS Form 8275, *Disclosure Statement*
- IRS Form 8867, *Paid Preparer's Due Diligence Checklist*
- [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](#)



Resources available in Spanish

- Formulario 2848, *Poder Legal y Declaración del Representante y Instrucciones para el Formulario 2848(SP)*
- Pub. 947, *Como Ejercer ante el Servicio de Impuestos Internos (IRS) y el Poder Legal*
- Formulario 8821, *Autorización para recibir Información Tributaria y Instrucciones para el Formulario 8821*
- Circular 230 del Departamento del Tesoro (Rev. 6-2014), *Reglamentos que rigen el ejercicio ante el Servicio de Impuestos Internos*