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Key Circular 230 Provisions:

What Every Tax Return Preparer Needs to Know

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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)



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Finding Cir 230

- Circular 230 (Rev 6-2014):
<http://www.irs.gov/pub/irs-pdf/pcir230.pdf>



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Key Circular 230 Provisions

- Due Diligence (10.22 and NEW 10.37)
- Conflicts of Interest (10.29)
- Taxpayer Checks (NEW 10.31)
- Due Diligence Standards for Returns and Other Docs (10.34)



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Key Circular 230 Provisions

- Competence (NEW 10.35)
- Procedures to Ensure Compliance (NEW 10.36)
- 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))



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More Info?

- Office of Professional Responsibility
1111 Constitution Ave. N.W.
SE:OPR Room 7238
Washington, D.C. 20224



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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? Only With Reasonable Care



Due Diligence for Written Advice

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§ 10.37

- Reasonable factual and legal assumptions
- Reasonably consider all relevant facts
- Reasonable efforts to identify and ascertain the relevant facts
- No unreasonable reliance on representations, statements, findings, or agreements = know or should know based on incorrect, incomplete, inconsistent representation/assumption



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§ 10.37 (Cont)

- Apply applicable law to relevant facts
- No audit lottery positions or advice
- Reliance on advice of another? OK, if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances
 - Reliance = unreasonable, if other
 - Is not reliable
 - Is incompetent
 - Has a conflict (10.29)
- Applies to All federal tax matters



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Conflicting Interests § 10.29

- One client interest directly adverse to another
- Significant risk of material limitation
 - By Responsibilities to
 - Another client,
 - Former client,
 - Third person
 - **OR PERSONAL INTEREST OF THE PRACTITIONER**



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Conflicts (cont)

- May represent if:
 - Reasonable belief in ability to provide competent, diligent representation to each affected client
 - Not legally prohibited
 - EACH affected client waives conflict, gives INFORMED consent – in writing at the time conflict is known



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Taxpayer Checks § 10.31

- May not endorse, negotiate, direct any US Treasury check in another's name
 - No cashing
 - No endorsing
 - No depositing to a controlled account
 - No split electronic transfers
 - Client concurrence is irrelevant
 - IRC 6695(f) penalty



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Due Diligence for Tax Returns

§ 10.34(a)

- May not sign a tax return or advise a position on a tax return, 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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Due Diligence for Documents and Other Papers § 10.34(b)

- May not advise 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



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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

§ 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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Competence § 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

- Anyone who has, or shares **principal authority and responsibility** for overseeing a firm's Cir 230 practice 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 Subparts A, B and C of Circular 230**.
- Anyone identified as having this principal authority **will be subject to discipline for failing to comply if--**



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§ 10.36 (Cont)

- (1) Through willfulness, recklessness, or gross incompetence fails to take reasonable steps to ensure adequate procedures for compliance with Circular 230 are in place **and properly followed**, and individual(s) members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice of failing to comply with Circular 230; or



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§ 10.36 (Cont)

- (2) Knows or should know that individual(s) members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice of failing to comply with Circular 230, and who fails to take prompt action to correct the noncompliance.



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

- No participating in any way in the giving of false/misleading info to Dept. of Treasury employees.
 - PoA's
 - Federal tax returns
 - Financial statements
 - Applications (PTIN, Enrollment)
 - Affidavits, declarations, and any other document or statement, written or oral



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Disreputable Conduct – Aiding and Abetting § 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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OPR Guidance

- Rights and Responsibilities of Practitioners in Disciplinary Cases:
[http://www.irs.gov/pub/irs-utl/Rights%20and%20Responsibilities%20of%20Practitioners%20in%20Circular%20230%20Disciplinary%20Cases%20\(6-12-2014\).pdf](http://www.irs.gov/pub/irs-utl/Rights%20and%20Responsibilities%20of%20Practitioners%20in%20Circular%20230%20Disciplinary%20Cases%20(6-12-2014).pdf)



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OPR Guidance

- Information (Resources) for Tax Professionals: <http://www.irs.gov/Tax-Professionals/Enrolled-Agents/Information-for-Tax-Professionals>
- Circular 230 Webinar- Soup to Nuts: http://www.irsvideos.gov/Circular230Overview_June_25_2014/



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OPR Guidance

- FBAR Responsibility:
http://www.irs.gov/pub/irs-utl/fbar_document_on_irs_gov_ver_08-04-10.pdf



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OPR Guidance

- Guidance on Restrictions During Suspension or Disbarment: http://www.irs.gov/pub/irs-utl/Guidance_on_Restrictions_During_Suspension_or_Disbarment.pdf
- Guidance Regarding Professional Obligations under Treasury Circular No.230: http://www.irs.gov/pub/irs-utl/Guidance_Regarding_Professional_Obligations_Under_Circular_230.pdf



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More Info?

- OPR Homepage: <http://www.irs.gov/Tax-Professionals/Circular-230-Tax-Professionals>
- OPR Bulletin: <http://www.irs.gov/Tax-Professionals/Subscribe-to-News-and-Updates-from-the-Office-of-Professional-Responsibility-OPR>