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An Overview of Tax Practice Ethical Rules and the Office of Professional Responsibility (OPR)

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Statutory Authority

- 31 U.S.C. § 330 (1884)
- Regulate the practice of representatives of persons before the Department of the Treasury
- Authorizes determinations of practitioner “fitness” to practice



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“Fitness to Practice”

- Good character
- Good reputation
- Necessary qualifications
- Competent



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Regulatory Authority

- 31 C.F.R. Subtitle A, Part 10 (1886)
- Treasury Circular No. 230 (1921)
- 31 C.F.R. 10.1(a)(1)



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What's In It?

- Authority to Practice (Licensing, Renewals, Continuing Education)
- Duties and Restrictions Relating to Practice (Ethics/Conduct)
- Sanctions for Violations (“Rules of Engagement”)
- Disciplinary Procedures (Due Process)



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“Practice”

- All matters under laws or regulations administered by the IRS
- Relating to a taxpayer’s rights, privileges, or liabilities
- Preparing, Filing, Corresponding, Communicating, Written advice (including emails), Advocating/Representing, Giving Appraisals for Tax Positions

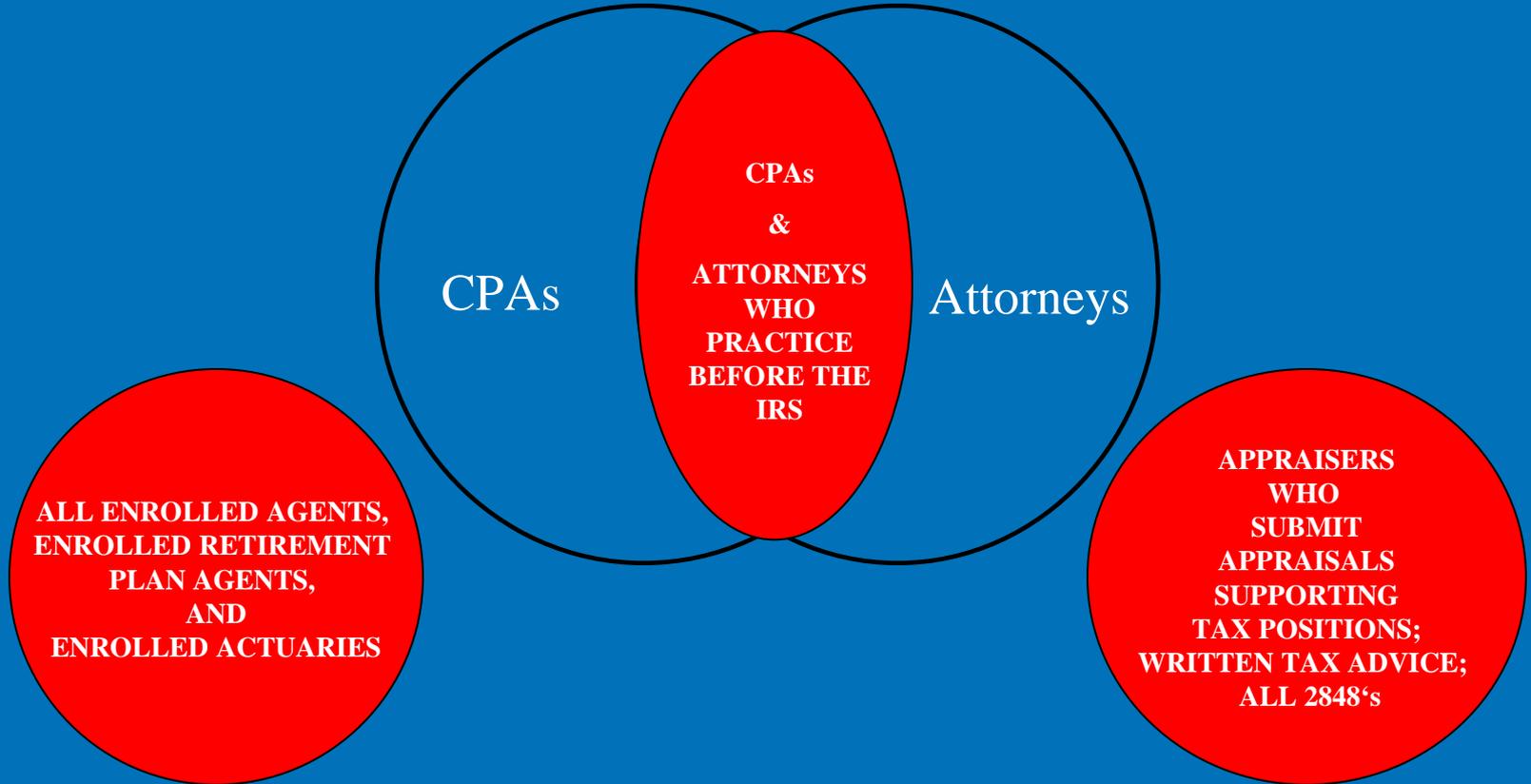


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OPR Jurisdiction



CPAs

CPAs
&
ATTORNEYS
WHO
PRACTICE
BEFORE THE
IRS

Attorneys

ALL ENROLLED AGENTS,
ENROLLED RETIREMENT
PLAN AGENTS,
AND
ENROLLED ACTUARIES

APPRAISERS
WHO
SUBMIT
APPRAISALS
SUPPORTING
TAX POSITIONS;
WRITTEN TAX ADVICE;
ALL 2848's



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OPR Complaint Process

- Sources of complaints:
 - IRS field personnel; other government; tax practitioners; and taxpayers
- Determine OPR Jurisdiction
- Evaluate for Violation of Circular 230 and consider Alternative Discipline Options



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Alternative Disciplinary Options

- “Soft Letter” (Compliance and Conduct)
- “Soft 60-Day Letter” (Compliance)
- Notice of Allegation (Conduct)
- Deferred Disciplinary Agreement (Both)



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OPR Complaint Process (Cont)

- Notice of Allegation
 - Notice to Practitioner
 - Before investigation begins
 - Outlines allegations with opportunity to respond



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OPR Complaint Process (Cont)

- Investigation
 - Evaluate evidence received
 - Database Searches
 - Interview Referent/Other Witnesses
- Allegation Letter



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OPR Complaint Process (Cont)

- Dispute
 - Conference/Settlement Opportunity
 - Complaint
 - Administrative Hearing - ALJ
 - Decision
- Appeal



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Available Sanctions

- Private Reprimand (Director discretion)
- Censure (Public Reprimand)
- Suspension (1-59 months)
- Disbarment (minimum 5 years)
- Monetary Penalty



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Title 31 - Monetary Penalty

- Up to 100% of gross income derived (or to be derived) from misconduct
- Can be in addition to, or in lieu of, other sanctions
- Only sanction available against firms
- First Firm Sanction – April, 2014



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Final Agency Decisions

- www.irs.gov
- Search: Office of Professional Responsibility
- A decision becomes the Final Agency Decision (FAD) at one of two points:



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Final Agency Decisions (Cont)

- 1) After an administrative law judge issues a decision and either party has not appealed the decision within 30 days; or,
- 2) After Decision on Appeal is issued.



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Final Agency Decisions (Cont)

3) The practitioner may further appeal the decision to the Federal District Court, but the decision will be made public, and the term of any suspension or disbarment will begin.



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Circular 230 – Duties and Restrictions

- Exercise General Due Diligence. (§ 10.22)
- No Contingent Fees & Negotiating Checks. (§ 10.27/10.31)
- No Conflicting Interests Without Consent. (§ 10.29)
- Return of Records. (§ 10.28)



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Circular 230 – Duties and Restrictions

- Advertising and Solicitation. (§ 10.30)
- Advising of Errors and Omissions and their Consequences. (§ 10.21)
- Providing False or Misleading Information to the IRS. (§ 10.51(a)(4))



Circular 230 – Duties and Restrictions

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- Assisting, counseling, encouraging, suggesting violation of federal tax law or illegal plan/scheme to evade tax/payment. (§ 10.51(a)(7))
- Signing Returns, Advising on Positions on Returns/Submissions in a Manner which Violates § 10.34



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Circular 230 – Duties and Restrictions

- Engaging in Contemptuous Conduct.
(§ 10.51(a)(12))
- Failing to Submit Records or Information to the OPR Upon Lawful Request.
(§ 10.20(a)(3))
- False or Misleading Opinions.
(§ 10.51(a)(13))



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Circular 230 – Duties and Restrictions

- Failing to Sign, or Preparing Without a PTIN. (§ 10.51(a)(14), (17))
- Representation Without Authorization/Credentials. (§ 10.51(a)(18))



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Complaints/More Info?

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



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APPENDIX



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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)
- Guidance on Restrictions During Suspension or Disbarment: http://www.irs.gov/pub/irs-utl/Guidance_on_Restrictions_During_Suspension_or_Disbarment.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 (Rev 6-2014): <http://www.irs.gov/pub/irs-pdf/pcir230.pdf>



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- Circular 230 Webinar- Soup to Nuts:
http://www.irsvideos.gov/Circular230Overview_June_25_2014/
- FBAR Responsibility:
http://www.irs.gov/pub/irs-utl/fbar_document_on_irs_gov_ver_08-04-10.pdf



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- OPR Bulletin: <http://www.irs.gov/Tax-Professionals/Subscribe-to-News-and-Updates-from-the-Office-of-Professional-Responsibility-OPR>
- Guidance Regarding Professional Obligations under Treasury Circular No.230: http://www.irs.gov/pub/irs-utl/Guidance_Regarding_Professional_Obligations_Under_Circular_230.pdf