

Internal Revenue Service
Office of Professional Responsibility

Guidance on Restrictions During Suspension or Disbarment
from Practice Before the Internal Revenue Service
February 12, 2014

The Office of Professional Responsibility (OPR) enforces the regulations governing practice before the IRS. These regulations are set out at 31 C.F.R. Subtitle A, Part 10, and are available in pamphlet form as Treasury Department Circular No. 230.

Under section 10.79 of Circular 230, an individual is not permitted to practice before the IRS during the period of time imposed for suspension or disbarment in the Final Agency Decision ("FAD"). A FAD can occur at one of three points: 1) by negotiated consent between the individual and OPR; 2) 30 days after issuance of an Initial Decision and Order by an ALJ which is not appealed by either party; or 3) immediately upon release of a FAD by the Appellate Authority for the IRS. In addition, an individual who is indefinitely suspended pursuant to the Expedited Suspension Procedures contained in section 10.82 is precluded from practicing before the IRS.

Section 10.2(a)(4) states that "Practice before the Internal Revenue Service

comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings."

The following Guidance is for individuals who are under suspension or disbarment from practice to inform them of specific restrictions these sanctions impose upon their future professional conduct and upon the conduct of others with whom they may deal.

OPR considers an individual's practice, or attempt to practice, while suspended or disbarred as an aggravating factor to be weighed in deciding the individual's reinstatement to practice at a future time. In addition, in evaluating an individual's eligibility for reinstatement to practice, OPR will consider the degree to which the individual has complied with the terms of the consent to suspension or disbarment and the degree to which, during the suspension or disbarment, the individual has complied with the rules of conduct in Circular 230.

A SUSPENDED OR DISBARRED INDIVIDUAL MAY NOT—

1. Prepare or file documents or correspond or communicate with the IRS.

The restriction applies regardless of whether the individual signs the document or correspondence and regardless of whether the individual personally files, or directs another person to file, documents or correspondence with the IRS. The prohibition applies to all means of communication, including person-to-person conversations, faxes, e-mails, other written materials, and telephone calls. The restriction generally does not apply to merely preparing tax returns, except as set forth in an injunction, FAD, Decision on Expedited Suspension, or by Consent.

2. Render written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion.

This prohibition applies regardless of whether the written advice is a part of a larger document or a component of a set of documents and regardless of whether the individual signs the written advice. The written advice need not be intended for submission to the IRS, so long as the written advice serves as a basis for a position taken on a return or any other document that is submitted to the IRS.

3. Represent a client before the IRS at conferences, hearings, and meetings.

This prohibition applies to all forms of conferences, hearings, and meetings, including those conducted person-to-person or by telephone or by teleconferencing facilities. The prohibition bars the individual from *representing* the taxpayer, that is, from advocating, disputing, arguing, or otherwise negotiating on the taxpayer's behalf with respect to the taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS, including provisions outside Title 26 that the IRS is authorized to administer (e.g., foreign bank account reporting under title 31 of the U.S. Code; certain provisions of the Affordable Care Act).

This prohibition applies regardless of whether the taxpayer is a paying client and also applies to all of the limited forms of practice defined in section 10.7(c) of Circular 230. This prohibition does not affect a taxpayer's right to the services of the individual as a witness or any right of the taxpayer to be accompanied by the individual to conferences, hearings, or meetings. However, OPR will consider any instances of the individual's advocating or negotiating on the taxpayer's behalf at conferences, hearings, or meetings, to be attempted practice in violation of the individual's suspended or disbarred status.

4. Execute waivers, consents, or closing agreements; receive a taxpayer's refund check; or sign a tax return on behalf of a taxpayer.

Because these acts require the filing of a power of attorney authorizing the representative to perform these acts, they are considered to be practice before the IRS and are prohibited during periods of suspension or disbarment.

5. File powers of attorney with the IRS.

OPR considers submission of a power of attorney attempting to appoint as a representative an individual who is under suspension or disbarment to be an attempt to practice in violation of the individual's suspended or disbarred status. An individual who seeks to practice before the IRS as a taxpayer's designated representative must declare (usually on Form 2848, *Power of Attorney and Declaration of Representative*) that the representative is not under suspension or disbarment from practice before the IRS. OPR refers false declarations made in powers of attorney to the Treasury Inspector General for Tax Administration for criminal investigation.

6. Assist another person (or offer assistance) if the assistance relates to a matter constituting practice before the IRS, or enlist another person for the purpose of aiding and abetting a suspended or disbarred individual's practice before the IRS.

Sections 10.24(a) and 10.51(a)(11) of Circular 230 prohibit individuals who are eligible to practice before the IRS from knowingly accepting assistance from, or assisting, or aiding or abetting a suspended or disbarred individual in matters constituting practice. OPR will consider both a suspended or disbarred individual's and any other individual's or employer's participation in such relationships to be separate violations of sections 10.24(a) and 10.51(a)(11), and evidence of disreputable conduct under section 10.51(a).

7. State or imply that he or she is eligible to practice before the IRS.

OPR considers express or implied statements of practice eligibility by a suspended or disbarred individual made to a client, a prospective client, or in any other context intended to solicit business, to be false, misleading, or deceptive, and to constitute a violation of section 10.30 of Circular 230. In addition, under section 10.6(j)(4) of Circular 230, individuals may not use the terms enrolled agent, or enrolled retirement plan agent, the designation "EA," or "ERPA," or other form of reference indicating eligibility to practice before the IRS while disbarred or suspended. These prohibitions apply to, among other things, business cards, business stationary, and any on-line presence, including web sites.

SUBJECT TO THE RULES OF CONDUCT CONTAINED IN CIRCULAR 230, A SUSPENDED OR DISBARRED INDIVIDUAL MAY —

1. Generally prepare tax returns.

Subject to exceptions stated in this paragraph, a suspended or disbarred individual generally may prepare, or assist in preparing, for compensation all or substantially all of

a tax return for a taxpayer. The individual may also sign a tax return as the preparer. An individual may **not**, however, do any of the following:

- Prepare, or assist in preparing, for compensation other documents pertaining to a taxpayer's tax liability for submission to the IRS.
- Prepare, or assist in preparing, for compensation a tax return or claim for refund when the individual is enjoined from doing so in accordance with an injunctive order or when the activities are prohibited in a FAD, Decision on Expedited Suspension, or by Consent.
- Represent taxpayers before the IRS in any capacity. This prohibition includes representation before the Examination Division, the Taxpayer Advocate Service, or IRS Customer Service with respect to a tax return the suspended or disbarred individual prepared or signed as the preparer. See restriction number 3 above (in the preceding section of this guidance) entitled, "Represent a client at conferences, hearings, and meetings," for a full description of the loss of limited practice rights while suspended or disbarred from practice.

2. Represent himself or herself with respect to any matter.

Authorized under section 10.7(a) of Circular 230.

3. Appear before the IRS as a trustee, receiver, guardian, administrator, executor, or other fiduciary if duly qualified/authorized as such under the law of the relevant jurisdiction.

Authorized under section 10.7(e). Fiduciaries should file Form 56, *Notice Concerning Fiduciary Relationship*.

4. Appear as a witness for the taxpayer.

Authorized under section 10.8(b) of Circular 230 and Revenue Procedure 68-29, 1968-2 C.B. 913, reprinted in pamphlet form as Publication 499. A witness is limited to providing factual information. He or she may not advocate particular positions on issues arising during a tax controversy matter.

5. Furnish information at the request of the IRS or any of its officers or employees.

Authorized under section 10.8(b).

6. Receive information concerning a taxpayer from the IRS pursuant to a valid tax information authorization.

A suspended or disbarred individual's designation on Form 8821, *Tax Information Authorization*, entitles him or her to receive taxpayer information but does not entitle him or her to practice before the IRS on behalf of that taxpayer.

7. Participate in the Statutory and Regulatory Rulemaking Process.

Authorized under section 10.7(b).

Effective: February 12, 2014