

Rev. Proc. 81-38

SECTION 1. PURPOSE

The purpose of this revenue procedure is to prescribe the standards of conduct, the scope of authority, and the circumstances and conditions under which an individual preparer of tax returns may exercise, without enrollment, the privilege of limited practice as a taxpayer's representative before the Internal Revenue Service, pursuant to section 10.7(a)(7) of Treasury Department Circular No. 230, [1966-2 C.B. 1171] (31 CFR Part 10).

SEC. 2. CHANGES

This revenue procedure modifies *Rev. Proc. 68-20, 1968-1 C.B. 812*, to reflect changes in titles based on the Internal Revenue Service's reorganization effective July 2, 1978, and applicable revisions to Treasury Department Circular No. 230, [1967-1 C.B. 433; 1970-2 C.B. 644] relating to practice before the Internal Revenue Service.

SEC. 3. APPLICABILITY

.01 This revenue procedure, issued pursuant to section 10.7(a)(7) of Circular 230, applies to all unenrolled individual preparers of returns who seek to represent taxpayers, within the United States, before examining officers in the Examination Division of an Office of a District Director of Internal Revenue or in the Office of International Operations. Any reference herein to the District Director will be construed, where appropriate, to include the Office of International Operations or the Director of International Operations.

.02 This revenue procedure does not apply to attorneys, certified public accountants, or agents who are enrolled to practice before the Internal Revenue Service. The rules governing the practice of such persons before the Service are contained in the provisions of Circular 230.

SEC. 4. SCOPE OF AUTHORITY

.01 An unenrolled individual who signs a return as its preparer may act as the taxpayer's representative if accompanied by the taxpayer, or by filing a written authorization from the taxpayer as provided herein in section 6. Such representation is limited to practice before examining officers of the Examination Division in the offices of District Directors and in the Office of International Operations, and may only encompass matters concerning the tax liability of the taxpayer for the taxable year covered by that return, subject to the limitations herein prescribed.

.02 Privilege of limited practice before the Internal Revenue Service is limited to any person who is not under disbarment or suspension from practice before the Internal Revenue Service or from practice of the person's profession by any other authority (in the case of attorneys, certified public accountants, public accountants, or actuaries).

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.03 An unenrolled individual who prepared a return that provides no space on the prescribed form for signature of the preparer, or who prepared a return with respect to which the instructions or regulations do not require that it be signed by the preparer, may appear as the taxpayer's representative, if properly authorized, as set forth in section 4.01.

.04 If the unenrolled preparer appears before the examining officers without the taxpayer, written authorization from the taxpayer for such representation as provided in section 6 must be filed with the examining officer along with a declaration that he or she is not currently under suspension or disbarment from practice before the Internal Revenue Service. The unenrolled preparer may also be required to furnish satisfactory identification.

.05 The unenrolled preparer will be expected to recognize questions, issues and factual situations of such difficulty as to require additional expert assistance and to suggest to the taxpayer that the taxpayer seek such assistance.

.06 If a carryback or carryforward, or both, are involved in a tax return, the unenrolled preparer will not be recognized as the taxpayer's representative with respect to the taxable year in which the carryback or carryforward arose unless that person prepared and signed a return for that year or years.

.07 The privilege to practice as a taxpayer's representative in accordance with this revenue procedure shall not constitute enrollment nor a finding of eligibility for enrollment.

SEC. 5. LIMITATIONS OF THE PRIVILEGE OF LIMITED PRACTICE

.01 Privilege of limited practice without enrollment afforded an individual preparer of returns is restricted to representation before the examining officer stated in section 4.04. No unenrolled preparer shall represent or correspond as the taxpayer's representative before the Appeals offices nor before officials in the National Office.

.02 In addition, the following acts on behalf of the taxpayer are beyond the scope of authority permitted an unenrolled preparer:

- (a) Executing claims for refund;
- (b) Receiving checks in payment of any refund of Internal Revenue taxes, penalties, or interest;
- (c) Executing consents to extend the statutory period for assessment or collection of a tax;
- (d) Executing closing agreements with respect to a tax liability or specific matter; and
- (e) Executing waivers of restriction on assessment or collection of a deficiency in tax.

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SEC. 6. FORM OF AUTHORIZATION FROM THE TAXPAYER AND DECLARATION BY THE REPRESENTATIVE

.01 Internal Revenue Service Form 2848-D, Authorization and Declaration, which can be obtained from local Internal Revenue Service offices, may be used in meeting the authorization and declaration requirements in section 4.04 of this revenue procedure. Part I of Form 2848-D is the taxpayer's authorization for the representative to receive and inspect confidential tax information and to act as the taxpayer's representative before the Internal Revenue Service and to make written or oral presentations of fact or argument on behalf of the taxpayer for the specified tax matter(s). Part II is the representative's declaration that the representative is not currently under suspension or disbarment from practice before the Internal Revenue Service and is authorized to represent the taxpayer as a certified public accountant, attorney, enrolled agent, unenrolled return preparer, etc.

.02 The use of technical language in the preparation of an authorization is not necessary, but the instrument must clearly indicate that the designated unenrolled preparer is authorized to represent the taxpayer before the Internal Revenue Service and specify the return prepared to which the authority relates. The authorization must also clearly set forth the taxpayer's name and address, the name and mailing address of the unenrolled preparer and must be signed by the taxpayer or taxpayers.

SEC. 7. ETHICS AND CONDUCT

.01 An unenrolled preparer shall act in such manner as not to commit any act of disreputable conduct. Disreputable conduct includes, but is not limited to, the items contained in section 10.51 of Circular 230.

.02 An unenrolled preparer shall not charge an unconscionable fee for representation of a client in any matter before the Internal Revenue Service.

.03 An unenrolled preparer shall not neglect or refuse to submit records or information in any matter before the Internal Revenue Service upon proper and lawful request by a duly authorized officer or employee of the Service; and the unenrolled preparer shall not interfere, or attempt to interfere, with any proper and lawful efforts by the officers or employees of the Service to obtain information, unless the preparer believes in good faith and on reasonable grounds that the request for, or effort to obtain, such record or information is of doubtful legality.

.04 Any unenrolled preparer who knows that the client has not complied with the revenue law, or that the client has made an error in or omission from any return, document, affidavit, or other paper that the client is required by law to execute in connection with any matter administered by the Service, shall advise the client promptly of the fact of the noncompliance, error, or omission.

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.05 An unenrolled preparer shall exercise due diligence in preparing or assisting in the preparation, approving, and filing of returns, documents, affidavits, or other papers relating to Internal Revenue Service matters. The preparer shall also exercise due diligence in determining (1) the correctness of oral and written representations made by the preparer to the Service, and (2) the correctness of representations made by the preparer to the client with reference to any matter administered by the Service.

.06 An unenrolled preparer shall not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

.07 An unenrolled preparer, as a Notary Public, shall not take acknowledgements, administer oaths, certify papers, or perform any official act in connection with matters relating to the client's tax liabilities, or in connection with any other matter in which the preparer may in any way have given assistance or been employed. In addition, the preparer may not take any acknowledgements, oaths, or certification as a Notary Public relating to any tax return, protest, or other document that the preparer has prepared or that the preparer has assisted in preparing. (26 *OP. Atty. Gen.* 236.)

.08 An unenrolled preparer shall not procure, or attempt to procure, directly or indirectly, from Government records or Government sources, information of any kind that is not made available by proper authority.

.09 An unenrolled preparer shall not represent conflicting interests in the preparer's limited practice before the Service, except by express consent of all directly interested parties after full disclosure has been made.

SEC. 8. SOLICITATION AND ADVERTISING

.01 An unenrolled preparer shall not make, directly or indirectly, an uninvited solicitation of employment, except as noted below, in matters relating to the Internal Revenue Service. Solicitation includes, but is not limited to, in-person contacts, telephone communications, and personal mailings directed to the specific circumstances unique to the recipient. This restriction does not apply to (1) seeking new business from an existing or former client in a related matter or (2) solicitation by mailings, the contents of which are designed for the general public.

.02 No unenrolled preparer shall, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication containing a false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim. This prohibition includes, but is not limited to, statements pertaining to the quality of services rendered unless subject to factual verification, claims of specialized expertise not authorized by state or federal agencies having jurisdiction over the preparer, and statements or suggestions that the ingenuity and/or prior record of a representative rather than the merit of the matter are principal factors likely to determine the result of the matter.

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.03 An unenrolled preparer may, in a dignified manner, publish, use, or broadcast through any means of communication:

- (a) The name, address, telephone number and office hours of the preparer or firm;
- (b) The names of individuals associated with the firm;
- (c) A factual description of the services offered;
- (d) That certain credit cards and other credit arrangements will be accepted;
- (e) Foreign language ability;
- (f) Appropriate fee information; and
- (g) Other facts relevant to the selection of an unenrolled preparer, which are not prohibited by the provisions of this revenue procedure.

SEC. 9. PERSONS INELIGIBLE TO PRACTICE UNDER THIS REVENUE PROCEDURE

.01 The following persons shall be ineligible to exercise the privilege of limited practice before the Internal Revenue Service:

- (a) Any individual who has been convicted of any criminal offense under the Revenue Laws of the United States or of any offense involving dishonesty or breach of trust within 5 years of the date of attempt to exercise the privilege. Individuals who have been so convicted more than 5 years before the date of attempt to exercise the privilege may be permitted to practice upon showing of evidence of rehabilitation satisfactory to the Director of the Examination Division;
- (b) Any individual who is under disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any state, possession, territory, Commonwealth, the District of Columbia, any federal court of record, or any federal agency, body or board;
- (c) Any individual who is disbarred or suspended from practice before the Internal Revenue Service;
- (d) Any individual whose application for enrollment to practice before the Internal Revenue Service has been denied;
- (e) Any individual who refuses or has refused to comply with this revenue procedure;
- (f) Any individual whose conduct or practices have been or are such as to constitute a violation of SEC. 7 or 8 of this revenue procedure;
- (g) Any individual who is an officer or employee of the United States or of the District of Columbia; and
- (h) Any individual who is an officer or employee of any state or any subdivision thereof, whose duties authorize such individual to investigate, pass upon, or act with respect to tax matters of that state or subdivision, if such employment may make or makes available to the individual facts or information applicable to federal tax matters.

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.02 In addition, corporations, associations, partnerships, or other business entities are ineligible to practice before the Internal Revenue Service.

SEC. 10. RULES GOVERNING RECOGNITION OF UNENROLLED PREPARERS

.01 Any examining officer, or other Service officer or employee who has reason to believe that an unenrolled preparer's conduct has been or is such as would render the preparer ineligible to appear as the taxpayer's representative before the Internal Revenue Service, shall communicate this information to the District Director of the taxpayer.

.02 In administering this revenue procedure, each District Director exercises original jurisdiction in determining whether an unenrolled preparer is eligible to appear as a taxpayer's representative. When the District Director receives information, either before or after an unenrolled preparer has been recognized, indicating that the preparer's conduct, practice, or employment has been or may be such as to render the preparer ineligible to represent taxpayers, the District Director will issue a written notice to the unenrolled preparer of proposed determination of ineligibility. This notice will contain information sufficient to apprise the unenrolled preparer of the basis for the proposed determination of ineligibility and will contain a request for a written reply within 30 days, and advise as to whether a conference is desired with the District Director or the District Director's delegate. If the unenrolled preparer fails to reply, or upon review if a reply is filed, or after a conference if one is held, the District Director will notify the unenrolled preparer in writing of the District Director's final determination. When warranted, the determination will state that the unenrolled preparer is ineligible to exercise the privilege of limited practice before the Service and that the District Director's determination may be appealed to the Director, Examination Division. A copy of each final determination of ineligibility issued by the District Director will be forwarded to the Director, Examination Division, National Office, Internal Revenue Service, together with copies of the notice of proposed determination of ineligibility, the unenrolled preparer's reply, if one is filed, and any other related papers or documents.

.03 An unenrolled preparer who wishes to appeal a District Director's final determination of ineligibility may, within 30 days of receipt of the final determination, submit a signed, written appeal together with the preparer's reasons in support of it, addressed to the Internal Revenue Service, Assistant Commissioner (Compliance), Director, Examination Division, Attention: CP:E:E:C, [*] 1111 Constitution Avenue, N.W., Washington, D.C., 20224. Upon filing of the written appeal, and the reasons in support of it, the unenrolled preparer, upon request, will be afforded the opportunity of a conference with the Director, Examination Division or the Director's designee. A decision will then be rendered by the Director, Examination Division or the Director's designee affirming, reversing, or modifying the decision of the District Director upon such terms and conditions as seem warranted under the facts and circumstances of the particular appeal. The decision of the Director, Examination Division or the Director's designee on this appeal will be final.

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.04 Whenever an unenrolled preparer's conduct has been or is such as would render the preparer ineligible to appear as the taxpayer's representative before the Internal Revenue Service, Service employees will continue to recognize the representative until a final determination of ineligibility has been issued by the District Director, and either the time for appeal has expired, or all appeals have been exhausted. However, recognition will not be continued where Service employees determine, or receive instructions from the District Director or the District Director's designee, that the representative should not be recognized because significant rights or interests of the taxpayer or Internal Revenue Service could be substantially harmed by continued recognition.

SEC. 11. SPECIAL ORDERS

.01 The Director, Examination Division may issue such special orders as the Director may deem proper in any matter within the purview of this revenue procedure.

.02 The unenrolled preparer who has been determined ineligible for limited practice before the Internal Revenue Service may request, after 1 year following the notice of final determination of ineligibility or decision on appeal, that the preparer's eligibility for limited practice be reinstated. Requests for reinstatement will be made to the District Director who may modify or revoke any previous determination. The District Director will consider the nature of the violation that resulted in ineligibility, the period of ineligibility, and the preparer's current adherence to the standards of ethics and conduct established by this revenue procedure in evaluating the request for reinstatement to limited practice. The consideration of a request for reinstatement will not be a reevaluation of any original determination of ineligibility.

SEC. 12. INQUIRIES

Inquiries from unenrolled preparers and Service personnel regarding this revenue procedure should be addressed to the Internal Revenue Service, Assistant Commissioner (Compliance), Director, Examination Division, Attention: CP:E:E:C, [*] 1111 Constitution Avenue, N.W., Washington, D.C., 20224.

SEC. 13. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 68-20 is modified and, as modified, is superseded.

* Now designated as CP:E:E:S