

2010
Tax FORUM
IRS Nationwide



Circular 230 – A Primer

What is Circular 230?

- Enabling legislation = Title 31 Part 10, Section 330 et seq. (1884).
- Treasury Regulations covering practice before the IRS.
- Prior regs renumbered to “230” in 1921- most recent revisions – 2007.
- Governs practice by attorneys, CPAs, enrolled agents, and others before the IRS.

Circular 230

- **Where can I get one?** Online at www.irs.gov/pub/irs-pdf/pcir230.pdf.
- **Do I need one?** Yes.
- **What if I break the rules?** Due Process conference with OPR to explain; Administrative Hearing, Appeal
- **Potential Sanctions:** Reprimand; Censure; Suspension; Disbarment; Monetary Penalty.

What is “Practice Before the IRS”

- All matters connected with a presentation to the IRS including, preparing and filing documents, communicating with the IRS, rendering written advice..., and representing a client at meetings. 10.2(4).
- See Publication 947, online at www.irs.gov/pub/irs-pdf/p947.pdf.

Current Eligibility for Enrollment (10.4)

Currently,

- (1) Take and Pass a Special Enrollment Examination, and
- (2) Apply using Form 23.
- Or present evidence of qualifying experience as a former IRS employee.

Due Diligence (10.22)

- Practitioners Must use Reasonable Efforts to comply with Tax Laws.
- When Preparing or Assisting with Tax Returns/Other Docs, or When Making Representations to IRS or Clients.
- Generally, failure to exercise due diligence involves conduct that is “more than a simple error.”
- Reliance on Others? Maybe.

10.22 Case Scenario

- James and Jarvis - high school friends.
- James - paid for college preparing tax returns for friends incl. Jarvis
- Jarvis - worked at McDonalds – no college – 1040EZ prepared by James.
- James - tax business-1,500 returns a year. No formal training. Reads Tax Pubs. No audits.
- Jarvis - married (twice), three children, 13 McDonalds franchises (Schedule C)

10.22 Case Scenario (cont.)

- James and Jarvis have never signed an engagement letter.
- Jarvis delivers a consolidated Schedule of income and expenses for the businesses to James each March.
- James relies on the Schedule to prepare Jarvis' tax return.
- Has James exercised Due Diligence in the preparation of Jarvis' tax returns? If you think not, what questions might James want answers to?

Negotiation of Taxpayer Checks (10.31)

- Preparers **MAY NOT** endorse or negotiate any check issued to a client by the government in respect of a Federal tax liability.
- Includes Diversion of Electronic Funds.
- Client Concurrence is Irrelevant.



2010

TAX FORUM

IRS Nationwide



Incompetence and Disreputable Conduct (10.51)

- Convictions for Criminal Offenses and Felonies.
- Giving, or Participating in Giving, False or Misleading Information.
- Failing to File Your Own Return or Evading ANY Assessment or Payment.
- Contemptuous Conduct.
- Assisting, Counseling, Encouraging Violations of Federal Tax Law.
- Giving False Opinions (oral or written).

Form 2848 Case Scenario

- EA, Matt, engaged by Dr. Lions for 2007 Audit representation - business and payroll.
- Form 2848 for only 2007 1120 and 4 Qtrs 941's.
- During the audit, RA opens 2006 year to examine an NOL c/f.
- Matt, unable to contact Dr. Lions, who is in rural Finland on Holiday, adds year 2006 to existing 2848 and resubmits as “new” 2848 to RA.
- Potential consequences for Matt?

10.34(b) Standards

- May not advise Positions that are Frivolous.
- May not advise Submissions
 - to delay or impede tax administration
 - that are frivolous
 - Containing or omitting information demonstrating an intentional disregard of rules or regulations.
- Preparers/Advisers Must Advise of Potential Penalties and Avoidance through Disclosure.
- Reliance on Client Information – No Willful Blindness.

Potential Client Case Scenario

- Potential Client (“PC”) Receives Notice of Intent to Levy.
- PC, a school teacher, owes \$85,000 from a failed consulting business.
- PC asks Practitioner to settle her tax debt - or at least buy time.
- PC tells Practitioner she earns \$60,000, has \$80,000 equity in her home and a mortgage of \$1,000/month, a late model car, savings accounts totaling \$8,000 and \$3,000 in credit card debt.

Potential Client (cont)

- Practitioner explains to PC that she will not qualify for an Offer in Compromise because her assets and net disposable income exceed her allowable debts.
- Nevertheless, PC requests, and Practitioner prepares and files Forms 656 and 433A to delay the collection process.
- Any Consequences to Practitioner for preparing and filing the Form 656?

Contacting OPR

- OPR@IRS.GOV
- 1111 Constitution Ave. N.W.
SE:OPR Rm. 7238
Washington, D.C. 20224
- Tel: 202-927-3397/Fax: 202-622-2207
- www.irs.gov (search: Office of Professional Responsibility)