

Circular 230 Best Practices

Do The Right Thing...

For Your Clients...

And For You!



TAX FORUM
IRS Nationwide
2009

Office of Professional Responsibility

- Enforcement of Circular 230
 - Special Enrollment Examination for Enrolled Agents - Same Day Results!
 - www.prometric.com/irs



IRC § 6694 Preparer Penalties

Final Regulations - Treas. Reg. § § 1.6694-1, et.

- Income, Estate, Gift, Excise, Employment, Exempt Organization Returns – See Rev. Proc. 2009-11^{seq.}
- One-Preparer-Per-Position-Per Firm
- Signing and Non-Signing Preparers
- You Can Be a “Preparer” Subject to IRC § 6694 Penalties Even if You Don’t See the Return!



IRC § 6694 - Preparer Penalties

Final Regulations - Treas. Reg. § § 1.6694-1, et. seq.

• Standards of Conduct to Avoid IRC § 6694 Penalty

- Disclosed - Reasonable Basis Standard
- Undisclosed – Substantial Authority Standard
- Tax Shelters – More Likely Than Not Standard

• Adequate Disclosure - Don't Be Cute!

- Form 8275, Form 8275-R, or Rev. Proc. 2008-14

• Reasonable Cause and Good Faith Exception



IRC § 7216 - Unlawful Disclosures

Return preparers who “knowingly or recklessly” make “unauthorized disclosures or use” of “information furnished in connection with the preparation of an income tax return” are subject to criminal sanctions (i.e., imprisonment!) under IRC § 7216



IRC § 7216 - Unlawful Disclosures

“Preparers” – Engaged in preparing or assisting in preparing tax returns, including those who provide auxiliary services such as developing software to prepare or e-file a return

“Tax Return Information” – Everything received to prepare the return plus computations, worksheets, and printouts created by the Preparer

See Revenue Procedure 2008-35 and Treas. Reg. § 301.7216-1, et. seq. for further information and pro forma taxpayer consent forms



Duty of the Tax Professional

- “Attorneys and accountants should be the pillars of our system of taxation, not the architects of its circumvention” – Former IRS Commissioner Mark Everson, March 18, 2003
- “The more we can work with you to help you and your clients get it right, the less time we need to spend dealing with problems after the fact.” - IRS Commissioner Doug Shulman, May 9, 2008



Circular 230 Overview

- Cir 230 - Rules governing “practice before the IRS” apply to:
 - Attorneys
 - Certified Public Accountants
 - Enrolled Agents
 - Enrolled Actuaries
 - Appraisers
 - Enrolled Retirement Plan Agents



Circular 230 Overview

- “[T]he Treasury Department's rules and regulations governing practice before the IRS are aimed at protecting the integrity of a tax system that depends upon voluntary compliance.”

Sicignano v. United States, 127 F. Supp. 2d 325, 332 (D. Conn. 2001)



§ 10.2(a)(4) - “Practice Before the IRS”

- Presentations regarding all matters before the IRS regarding laws or regulations administered by the IRS
- Return preparation
- Representation of taxpayers
- Providing written advice with respect to any entity, transaction, plan or arrangement having a potential for tax avoidance



§ 10.20 – Information Requested by the IRS

- Upon request by the IRS, the practitioner must promptly:
 - Submit non-privileged records & information to IRS
 - Notify IRS of the location of requested records & information in possession of others
 - Make reasonable inquiries of the client regarding the location of requested records & information in possession of others
 - Not required to inquire of others or independently verify information provided by the client



§ 10.21 – Knowledge of Clients Error or Omission

- If you know the client has made an error or omission from any return or other tax-related document submitted to the IRS you:
 - Must advise the client of the nature of the error or omission
 - Must advise the client of the potential consequences of the error or omission under the Code or Regulations
 - Be clear in your advice!



§ 10.22 – Diligence as to Accuracy

- Practitioners must exercise due diligence re preparation of returns and documents and in determining the correctness of representations to the client and to the IRS
- Practitioners are presumed to have exercised reasonable care and due diligence when relying upon work product of others. Were you intentionally ignorant?



§ 10.23 - Prompt Disposition of Pending Matters

A practitioner may not
unreasonably delay the
prompt disposition of any
matter before the IRS



§ 10.27 - Fees

- No unconscionable fees for matters before IRS
- No contingent fees unless re an IRS challenge to:
 - Original tax return,
 - Amended return or refund claim filed w/in 120 days of receipt of IRS examination notice,
 - Refund claim re assessed interest or penalties,
 - Judicial proceeding arising under the Code.
 - See Notice 2008-43 re permissible fee structures



§ 10.28 – Return of Client Records

- Practitioner must promptly return all records of the client, even if a fee dispute exists
 - Unless State law permits retention
 - But, even then, the records must be returned if required to be attached to the tax return
 - Must allow client access to review and copy records necessary to comply with their Federal tax obligations
 - May retain copies of client records



§ 10.28 – Return of Client Records

- “Records of the Client”
 - Records that preexisted the engagement of practitioner,
 - Prepared by client or others at any time, or
 - Prepared by the practitioner and presented to client if necessary for client to comply with Federal tax obligations.
 - N/A to returns, schedules, etc. prepared by the practitioner being withheld pending a fee dispute



§ 10.29 – Conflict of Interest

- Practitioner may not represent a client before the IRS if the representation involves a “conflict of interest.”
- “Conflict of Interest” exists if:
 - Representation is directly adverse to another client
 - Significant risk that representation will be materially limited by the practitioners responsibilities to another client, a former client or a personal interest of the practitioner



§ 10.29 – Conflict of Interest

- Notwithstanding a conflict of interest, the practitioner may represent a client if:
 - Reasonable belief you are able to provide competent and diligent representation,
 - Representation is not prohibited by law, and
 - Written, informed waiver of the conflict by each affected client signed no later than 30 days after conflict is known by the practitioner
 - Must retain consent for 36 months



§ 10.33 – Best Practices

- Clearly communicate with clients and IRS
- Establish relevant facts, evaluate reasonableness of assumptions or representations, apply relevant legal authorities in arriving at a conclusion supported by the law and the facts
- Advise the client re potential penalties
- Act fairly and with integrity in dealings with the IRS. Your reputation counts!



§ 10.34 – Practitioner Standards

- Must advise client of potential penalties re:
 - Positions on returns you prepared or positions where you rendered advice
 - Any documents submitted to the IRS



§ 10.34 – Practitioner Standards

- Must advise client of opportunities to avoid penalties through disclosure and the requirements for an adequate disclosure
- May rely in good faith, without verification, upon information furnished by the client
- Must make reasonable inquiries if information received or assumptions appear incorrect or incomplete



§ 10.37 – Written Advice

- Practitioner may not give written or electronic advice based on unreasonable legal or factual assumptions or representations
- May not give advice that takes into account:
 - The possibility of an audit,
 - Whether the issue will be raised on audit, or
 - Whether, if raised on audit, the issue would be resolved through settlement



§ 10.50 – OPR Sanctions

- Censure,
- Suspension, or
- Disbarment from practice before the IRS.
- Additionally, OPR may impose a monetary penalty not to exceed the gross income derived or to be derived from the conduct giving rise to the penalty.



§ 10.51 – Incompetence or Disreputable Conduct Subject to Sanctions

- Giving any false or misleading information
- Use of misleading information with the intent to deceive a client or prospective client
- Willful failure to file a required Federal tax return or evading any assessment of tax
- Willfully assisting others in the violation of any Federal tax law
- Disbarment or suspension as an attorney, CPA, or actuary by any State licensing authority



§ 10.51 – Incompetence or Disreputable Conduct Subject to Sanctions

- Knowingly aiding a person to practice before the IRS who is ineligible, suspended or disbarred
- Contemptuous conduct in connection with IRS practice
- Giving false opinions based on knowing misstatements of fact or law
- Willful failure to sign, if required, a tax return prepared by the practitioner
- Unauthorized disclosure or use of tax return information



§ 10.53 – Report of Suspected Cir 230 Violations to OPR

If an IRS employee has reason to believe that a practitioner has violated Cir 230, they shall promptly make a written report to the Director of the OPR of the suspected violation explaining the facts and reasons supporting their belief.

See also IRM 20.1.6.2.1 (02-08-2008)



§ 10.80 – Report of Final Cir 230 Sanctions to State Licensing Authorities

- Upon issuance of final order of censure, suspension or disbarment, the Director of OPR may give notice of such action to:
 - Representatives of the IRS
 - Representatives of other Federal agencies
 - The appropriate State licensing authorities



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