

Guidance On Restrictions During Suspension Or Disbarment From Practice Before The Internal Revenue Service

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By the Internal Revenue Service Office of Professional Responsibility



The Office of Professional Responsibility (OPR) enforces the regulations governing practice before the IRS. These regulations are set out at 31 C.F.R. Part 10, and are reprinted in pamphlet form as Treasury Department Circular No. 230. The materials on which this article was based were prepared by the Internal Revenue Service Office of Professional Responsibility.

Even if the worst never happens to you, it helps to know the rules.

UNDER SECTION 10.79 of Circular 230, when a final agency decision results in suspension or disbarment of a practitioner/respondent or when the practitioner/respondent has offered his or her consent to suspension or disbarment and such consent has been accepted by the Director of the Office of Professional responsibility (OPR), the practitioner/respondent will not be permitted to practice before the IRS for the period of time imposed by the final agency decision or as agreed to by consent. 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.”

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

OPR will consider an individual’s practice, or attempt to practice, while suspended or disbarred as a factor militating against the individual’s reinstatement to practice. 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 (including tax returns or other correspondence) 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. Also, as a result of a suspension or disbarment, the individual will have any preparer tax identification number (PTIN) revoked.

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.

The 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.

3. Represent a client at conferences, hearings, and meetings.

The 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 Internal Revenue Service, including provisions outside Title 26 which have been del-

egated to the Commissioner by the Treasury Secretary or Congress (e.g., foreign bank account reporting; health care insurance premium provisions).

The 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). The 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. See section 601.504(a) of the IRS Conference and Practice Requirements, which are set out at 26 C.F.R. sections 601.501 through 601.509 and are reprinted in pamphlet form as Publication 216.

5. File powers of attorney with the IRS.

OPR will consider the filing of a power of attorney appointing an individual as a representative 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 must declare (usually on Form 2848, Power of Attorney and Declaration of Representative) that he or she is not under suspension or disbarment from practice before the IRS. OPR will refer false declarations to the Treasury Inspector General for Tax Administration.

6. Accept assistance from another person (or request assistance) or 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 practice before the IRS

Sections 10.24(a) and 10.51(a)(11) prohibit individuals who are eligible to practice before the IRS from 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 and any other individual's/firm's participation in such relationships to be in violation 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 will consider such express or implied statements to be false, misleading, or deceptive, and to constitute a violation of section 10.30. In addition, under section 10.6(j)(4), individuals may not use the terms

“enrolled agent,” “enrolled retirement plan agent,” or “registered tax return preparer,” the designation “EA” or “ERPA,” or other form of reference to eligibility to practice before the IRS while disbarred, suspended, or in inactive status. These prohibitions apply to business cards, business stationary, and websites.

A suspended or disbarred individual may nevertheless—

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

Authorized under section 10.7(a).

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

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

3. Appear as a witness for the taxpayer.

Authorized under section 10.8(b) 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, and he or she may not advocate particular positions on issues or controversies arising during a tax examination.

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

Authorized under section 10.8(b).

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

A suspended or disbarred individual’s appointment 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.

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