

## **Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases**

### **Who is subject to discipline under Circular 230?**

- State-licensed Attorneys and Certified Public Accountants authorized and in good standing with their state licensing authority who interact with tax administration at any level.
- Enrolled practitioners -- Enrolled Agents, Enrolled Retirement Plan Agents, and Enrolled Actuaries.
- Individuals who provide appraisals used in connection with federal tax matters (e.g., charitable contributions; estate and gift assets; fair market value for sales gain; etc.).
- Tax return preparers who are unenrolled and unlicensed (as attorneys or certified public accountants) and who represent taxpayers before the IRS in connection with tax returns the representative prepared and signed.
- Licensed and unlicensed individuals who give written advice with respect to any entity, transaction, plan or arrangement; or other plan or arrangement, which is of a type the IRS determines as having a potential for tax avoidance or evasion. For this purpose, “written advice” means all forms of written material, including the content of an email, given in connection with any law or regulation administered by the IRS.
- Any individual submitting a power of attorney for limited representation of a taxpayer (such as an immediate family member) before the IRS.

See Circular 230, Sections 10.3 – Who may practice; 10.8 – Return preparation and application of rules to other individuals; 10.50 – Sanctions; 10.51 – Incompetence and disreputable conduct; and 10.60 – Institution of proceeding.

The Office of Professional Responsibility (OPR) has exclusive authority for all matters related to practitioner discipline, including disciplinary proceedings and sanctions. See Circular 230, Section 10.1 – Offices. The OPR is committed to processing referrals and conducting investigations in a timely and fair manner. The investigative process and disciplinary proceedings follow established due-process guidelines designed to ensure that practitioners receive notice of the allegations against them and an opportunity to present their side of the story at multiple stages.

**Receipt and Review of Referrals:** The OPR receives referrals about practitioners from a variety of sources. The majority of referrals come directly from IRS field personnel, such as Revenue Agents, Revenue Officers, Special Agents and Appeals/Settlement Officers. The OPR also receives referrals from other government agencies, such as the Treasury Inspector General for Tax Administration (TIGTA), the Department of Justice and state licensing authorities. The OPR sometimes receives (directly or routed from elsewhere in the IRS) complaints about a practitioner from the public (typically from taxpayer-clients of the practitioner) or from other tax practitioners who may be aware of a peer’s unprofessional conduct. Whatever the source, if it

appears that a violation of Circular 230 has occurred, the case is assigned to an attorney or paralegal for communication with the referred individual and for further investigation.

**Right to Representation:** During an OPR investigation, you may choose to be represented by someone authorized to practice before the IRS. If you choose to have a representative during an OPR investigation into issues relating to your own tax compliance, your representative must file a Form 2848, *Power of Attorney and Declaration of Representative*, with an appropriate entry in the “Description of Matter” section of the form (an example appears on the form). If your investigation relates to a conduct matter (and does not involve your own tax compliance), your representative may submit either a Form 2848 or a letter of representation at first contact with the OPR.

**Notice of an Investigation:** Whenever the OPR receives a referral (or comparable information) that describes a possible violation of Circular 230, the OPR will mail a letter to your last known address on file with the IRS. The letter will describe the nature of the allegations and the specific provisions of Circular 230 that appear to have been violated. The letter will also include the name and contact information of the OPR attorney-advisor or paralegal assigned to the case.

**Opportunity to Respond:** You should respond promptly to any correspondence from the OPR. You will have an opportunity to respond to the allegations and to provide evidence, including mitigating or extenuating information, throughout the investigation. You may provide evidence when the OPR initially contacts you after determining the matter referred to the OPR warrants additional investigation. You also may provide evidence after the OPR informs you of its conclusion that you committed sanctionable violations of Circular 230 and the violations call into question your fitness to continue to practice before the IRS. The OPR encourages you to submit any favorable evidence that may aid in resolving the case as early as possible in the investigative stage. During the course of its investigation, the OPR may request, in writing, additional documentation or other information from you that is needed or pertinent to the investigation. Any failure to respond to such an inquiry is a separate violation of Circular 230, Section 10.20. Any letter from the OPR staff will include a deadline by which a response from you will be required. If you are unable to meet the deadline, you must ensure that you or your representative communicates that to the OPR point of contact immediately.

**Negotiated Sanctions:** The OPR will attempt to negotiate a disciplinary sanction that the OPR believes is warranted in connection with your violations of Circular 230. See Circular 230, Section 10.61(b)(1) – Voluntary sanction. Possible sanctions are censure, suspension or disbarment from practice before the IRS, or a monetary penalty. See Circular 230, Section 10.50 – Sanctions. Monetary penalties may be applied to individuals or firms. Generally, the OPR may not impose a sanction on you if you do not agree. Nevertheless, the OPR has discretion to privately reprimand you, regardless of your consent, if sufficient evidence exists that you have willfully violated Circular 230. Alternatively, the OPR has the option of sending you a cautionary letter, advising you that based on the OPR’s investigation of your conduct you should re-educate yourself on Circular 230’s standards and conform your future actions accordingly.

**Administrative Proceeding:** If the OPR is unsuccessful in negotiating acceptable discipline with you, the OPR will commence a formal disciplinary proceeding by drafting a complaint, which is sent to the IRS Office of Chief Counsel, General Legal Services (GLS), for filing with

an Administrative Law Judge (ALJ). The ALJ will be from a federal agency other than the IRS or the Department of the Treasury.

GLS will serve you with the complaint, either by means of a private delivery service or by certified (and if necessary, regular, first-class) mail. You will have 30 days to file an answer, or request and be granted an extended due date by the ALJ. If you fail to answer, the OPR will file a Motion for a Default Decision against you. You must answer by the deadline to preserve all of your rights to be heard in the proceeding. Once you file an answer, the ALJ will set a schedule for any discovery requests between the parties, issue orders as to motions and responses, and schedule a hearing date for the case. The ALJ holds a hearing in Washington, DC, unless you request a location, in which there is a federal courthouse, closer to your place of residence. Anyone authorized to practice before the IRS, including a licensed attorney, may represent you at a hearing. See Circular 230, Sections 10.60-10.76 – Rules applicable to Disciplinary Proceedings.

Hearings before the ALJ generally involve a relaxed application of the Federal Rules of Evidence. Both parties may offer documentary evidence and testimony relevant to the issues present in the case. Most hearings will last one day or less. The ALJ will issue an Initial Order and Decision, usually within 180 days of the conclusion of the hearing. The ALJ may: 1) confirm the OPR's position with respect to the alleged Circular 230 violations and the appropriate sanction; 2) reject the OPR's position entirely, and dismiss the complaint; or 3) adopt but modify the OPR's position with respect to either the Circular 230 violations or the appropriate sanction, or both.

**Appeal from Administrative Decision:** Both the OPR and you have the right to appeal the Initial Decision and Order of the ALJ to the Department of the Treasury within 30 days of being served with the decision. An individual delegated to act as the "Appellate Authority" for the Treasury Department reviews the notices of appeal and related briefs and renders the Final Agency Decision in the case. See Circular 230, Section 10.77 – Appeal of decision of Administrative Law Judge; and Section 10.78 – Decision on review.

**Filing Suit in U.S. Federal District Court:** If you disagree with the Appellate Authority's Final Agency Decision, you may file a complaint against the Director, OPR in U.S. Federal District Court in the district where you reside. The Administrative Procedure Act contains provisions governing that proceeding. See 5 U.S.C. Sections 551-559, 701-706. The proceeding will not be a new trial. Rather, the district court will review the entire administrative record already in existence in the case to determine if the agency's action against you was arbitrary, capricious, contrary to law or otherwise an abuse of discretion.