

Office of Chief Counsel
Internal Revenue Service
memorandum

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to: Stephen Whitlock
Deputy Director
Office of Professional Responsibility

from: Richard Goldstein 
Special Counsel
Procedure & Administration

subject: Illinois CPA

This memorandum is in response to your inquiry regarding the treatment of Certified Public Accountants (CPAs) in Illinois under Circular 230.

Issue

Whether an individual who holds an Illinois CPA certificate, but is not a licensed public accountant, may practice before the IRS?

Conclusion

No. To practice before the IRS, a CPA must be duly qualified to practice as a CPA in any State, territory, or possession of the United States or the District of Columbia, or the CPA must be an enrolled agent or actuary. An individual who holds an Illinois CPA certificate also must be a licensed public accountant to practice public accountancy in Illinois. Accordingly, an individual who holds an Illinois CPA certificate, but is not a licensed public accountant in Illinois, may not practice before the IRS unless the individual is a CPA qualified to practice as a CPA in another State, the District of Columbia, territory or possession of the United States, or an enrolled agent or actuary.

Facts

Illinois has a two step process for practicing public accountancy. The first step is to take and pass the CPA exam. After passing the exam, the individual is issued a CPA "certificate." The CPA must, however, attain at least one year of full-time experience providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills before he or she may practice public accountancy. A CPA with the requisite experience may apply for a license to be a public accountant.

Only a licensed CPA is authorized to practice public accountancy in Illinois. A licensed CPA that commits disreputable conduct in Illinois may lose his or her public accountancy license but will not lose the CPA certificate.

Law and Analysis

Section 500(c) of Title 5 of the United States Code sets forth the general rules for practicing before United States administrative agencies. This section provides that an individual who is *duly qualified to practice as a CPA* in a State may represent a person before the IRS by filing with the agency a written declaration that he is *currently qualified* as provided by this subsection and is *authorized to represent the particular person in whose behalf he acts*. The regulations governing practice before the IRS (Circular 230) mirror 5 U.S.C. 500(c). Section 10.2(b) of Circular 230 defines a CPA, in relevant part, as any person who is *duly qualified to practice as a CPA* in any State. Section 10.3(b) further provides that any CPA who is not currently under suspension or disbarment from practice before the IRS may practice before the IRS by filing with the IRS a written declaration that he or she is *currently qualified as a CPA and is authorized to represent the party or parties on whose behalf he or she acts*.

The decision to include CPAs within the class of professionals entitled to practice before the IRS by virtue of their State professional status is discussed in H.R. Rep. No. 1141, 89 Cong. Cong., 1st Sess. (October 25, 1965). In explaining why CPAs are not subject to our admission procedures, the House noted:

[T]here is a presumption that members in good standing of the profession[] of . . . certified public accountancy are of good moral character, and that surveillance by . . . State associations of certified public accounts [sic] will sufficiently insure the integrity of practice by such persons before the Internal Revenue Service. The cumbersome admission procedures of the Internal Revenue Service seem unwarranted in their impact on duly qualified . . . certified public accountants.

Id. at 4.

The Illinois Public Accounting Act (the Act) defines a CPA as “any person who has been issued a certificate as a certified public accountant from the Board of Examiners.” 225 ILCS 450 § 0.03(a). An individual receives a certificate as a CPA from the Illinois Board of Examiners (the Board) by taking and passing the CPA exam administered by the Board.

Under section 7 of the Act, a holder of a CPA certificate issued by the Board is not, however, authorized to practice public accountancy in Illinois until the individual receives a license to practice as a public accountant from the Board. 225 ILCS 450 § 7. To apply for a license, an individual must have a CPA certificate and at least one year of full-time experience, or its equivalent, providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting

skills, which may be gained through employment in government, industry, academia, or public practice. 225 ILCS 450 § 14(a). CPAs must renew their license every three years, comply with all of the ethical requirements, and satisfy the continuing professional education requirements. A CPA's failure to renew his or her license may result in disciplinary action, such as refusal to issue or renew a license, revoke or suspend a license, or reprimand a licensee. 225 ILCS 450 §§ 16(b) and 20.01.

Section 9 of the Act provides that no person shall begin to practice accountancy in Illinois or hold himself out as being able to practice accountancy in Illinois, unless he is licensed in accordance with the provisions of the Act. 225 ILCS 450 § 9.

CPAs in Illinois are not subject to strict scrutiny before being granted their CPA certificate. Rather, they are merely required to fulfill certain course requirements and to sit for, and pass, the CPA exam. The Board monitors only those CPAs who apply for and receive a license to practice public accountancy. If a CPA violates any of the Board's rules, then the CPA may lose his or her license to practice accountancy but will not lose his or her CPA certificate.

This two tier system of admitting CPAs to practice accountancy in Illinois means that only a licensed CPA is duly qualified to practice accountancy in Illinois. An individual who holds an Illinois CPA certificate, but is not licensed to practice public accountancy in Illinois, is not duly qualified to practice as a CPA as required by 5 U.S.C. 500(c) and Circular 230 § 10.3 unless the individual is licensed to practice as a CPA in another State, District of Columbia, territory or possession of the United States, or is an enrolled agent or actuary.

Specific Questions Raised

Your office raised four questions related to this issue. Our responses to your questions assume that the individual in question is a CPA in Illinois, and is not a CPA in any other State, District of Columbia, territory or possession of the United States, or an enrolled agent or actuary.

1. Which of the following individuals is entitled to sign a Form 2848 as a CPA?
 - a. An individual who has an Illinois CPA certificate, but not an Illinois PA license.
 - b. An individual who has an Illinois CPA certificate and an Illinois PA license.
 - c. An individual who has an Illinois CPA certificate but whose Illinois PA license has been suspended or revoked.

Answer: b. An individual that is a CPA in Illinois may only sign a Form 2848 as a CPA if that individual is also a licensed public accountant. If the CPA's license is suspended or revoked, the CPA is not duly qualified to practice public accountancy in Illinois and is, therefore, not authorized to sign a Form 2848 as a CPA.

2. If an individual in Illinois is not a licensed public accountant (or if the individual's license was suspended or revoked), and the individual signs and submits a Form 2848 as a CPA, is such signing "false information" for purposes of § 10.51(d) of Circular 230, a "false, fictitious, or fraudulent statement" for purposes of 28 U.S.C. 1001, or otherwise in violation of any Federal criminal statute?

Answer: Section 10.51 of Circular 230 lists incompetence or disreputable conduct for which a *practitioner* may be censured, suspended, or disbarred from practice before the IRS. (Emphasis added). An unlicensed CPA in Illinois is not a practitioner, as defined by Circular 230 § 10.2(b) and cannot practice before the IRS. Therefore, if an individual who is ineligible to practice signs and submits a Form 2848, the IRS should not recognize the individual as the taxpayer's representative. Where the individual subsequently applies for enrollment to practice before the IRS, OPR may consider this conduct in determining whether the application should be granted. See Circular 230 § 10.4(a).

Additionally, should your office become aware of egregious situations in which an individual who is not eligible to practice is signing and submitting Forms 2848, please consult with the Offices of Associate Chief Counsel (Procedure & Administration) and (General Legal Services). Our offices can help you determine what, if any, additional civil or criminal actions should be pursued.

3. Since it appears that one cannot be a PA without also being a CPA, may IRS employees accept powers of attorney from individuals who sign as CPAs, but only hold themselves out (on business cards, letterhead stationary, advertising) to be PAs?

Answer: The first requirement of being a licensed public accountant in Illinois is that the individual took and passed the CPA exam and has a CPA certificate. Thus, if the individual is a public accountant in Illinois, the individual may sign a Form 2848 as a CPA.

4. Is a PA whose license has been suspended or revoked for cause subject to an expedited proceeding under § 10.82(b)(1) of Circular 230, which refers to "licenses" does not mention PAs, or is such an individual only subject to a nonexpedited proceeding for violating § 10.51(i), which specifically mentions PAs?

Answer: Yes. A licensed public accountant in Illinois whose license is suspended or revoked for cause may be subject to an expedited proceeding under § 10.82(b)(1), because a licensed public accountant in Illinois must be a CPA, and only licensed CPAs are authorized to practice public accountancy in Illinois.

If you have any questions, please contact Bridget Tombul at 622-7679.

cc: Frank Inserra