

**Office of Chief Counsel  
Internal Revenue Service  
memorandum**

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to: Deputy Director  
Office of Professional Responsibility

from: Special Counsel to the Associate Chief Counsel  
(Procedure & Administration)

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subject: California Public Accountants

This memorandum responds to your inquiry regarding practice before the Internal Revenue Service (IRS) by California public accountants.

***Issue***

Whether individuals who hold current public accountant permits in California, but who are not certified public accountants, are eligible to practice before the IRS by virtue of their public accountants' status?

***Conclusion***

Yes. The statute and regulations provide that an individual who is duly qualified to practice as a CPA in any state, territory, or possession of the United States or the District of Columbia may represent a person before the IRS. Under California law, a registered and licensed public accountant has the same rights and privileges as a certified public accountant. CAL. BUS. & PROF. CODE Ch. 1 (2003). Thus, for purposes of Circular 230, a public accountant registered and licensed in California is eligible to practice before the IRS by virtue of his public accountant's license.

***Facts***

Two categories of individuals may practice public accountancy in California: CPAs and public accountants. Further, any professional services required by law or regulation to be performed by a CPA may, by statute, be performed by a CPA or public accountant. CAL. BUS. & PROF. CODE §§ 5051 and 5036 (2003).

***Law and Analysis***

Section 500(c) of title 5 of the United States Code sets forth the general rules for practicing before the United States administrative agencies. This section provides that

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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 section 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., 1<sup>st</sup> Sess. (October 25, 1965). In explaining why CPAs are not subject to the Service's 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 accountants [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.

Under California law, only individuals possessing a permit to practice public accountancy issued by the Board may practice public accountancy in the state<sup>1</sup>. CAL. BUS. & PROF. CODE § 5050 (2003). The Board issues licenses to practice public accountancy to CPAs and public accountants.

A CPA is an individual who has received from the California Board of Accountancy (the Board) a certificate of certified public accountant and who holds a valid permit to practice under the Business and Professions code. CAL. BUS. & PROF. CODE § 5033 (2003). CPA licenses are generally issued to individuals who have satisfied certain educational requirements which include a set amount of accounting or business-related coursework, have passed all four sections of the CPA examination administered by the Board, have passed the ethics examination, have satisfied certain experience requirements, and have not committed crimes constituting grounds for denial of licensure<sup>2</sup>. CAL. BUS. & PROF. CODE § 5080 through 5095 (2003).

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<sup>1</sup> Out-of-state and foreign licensed CPAs whose principal place of business is outside of California may temporarily practice in California until December 31, 2005. CAL BUS. & PROF. CODE § 5050 (2003). Beginning January 1, 2006, these individuals may temporarily practice only if they satisfy certain qualifications, register with the Board, and pay a fee. CAL BUS. & PROF. CODE § 5096 (2003).

<sup>2</sup> The educational and experience requirements vary. For example, the working experience requirement for an applicant with a masters degree in accounting is less than that of an applicant with a bachelor's degree in accounting.

A public accountant is any person who has registered with the Board as a public accountant and who holds a valid permit for the practice of public accountancy. CAL. BUS. & PROF. CODE § 5034 (2003). The state last admitted new applicants as public accountants in 1968. Former § 5070.1, added by Stats.1967, c. 709, p. 2082, § 1, relating to qualifications of prior applicants for registration as public accountants, was repealed by Stats.1968. c. 519, p. 1160 § 1. California law provides that public accountants have the same rights and privileges as CPAs. See, e.g., CAL. BUS. & PROF. CODE §§ 5051 and 5036 (2003). It further provides that any services that are required by law to be performed by a CPA may be performed by a CPA or public accountant. CAL. BUS. & PROF. CODE § 5036 (2003) and 44 Op. Atty Gen. Cal. 161 (1964).

The California Business and Professions Code provides for the issuance of two-year permits to engage in the practice of public accountancy in the state. CAL. BUS. & PROF. CODE § 5070 (2003). Only those persons holding a permit to practice public accounting may hold themselves out to the public as being qualified for the practice of public accounting in the state. CAL. BUS. & PROF. CODE §§ 5055 and 5056 (2003). Permits to engage in the practice of public accounting may be renewed upon application provided the CPA or public accountant has completed 80 hours of continuing education. CAL. BUS. & PROF. CODE §§ 5070.5(a) and 5026 (2003) and CAL. CODE REGS. tit. 16, §§ 80 through 94 (2004).

Public accountants, like CPAs, may be disciplined and potentially lose their permit to practice accountancy for any failure to comply with the provisions of the Business and Professions Code or any violation of the conduct provisions contained in section 480 of the Business and Professions Code. CAL. BUS. & PROF. CODE §§ 5096.2 and 5060-5063 (2003).

Accordingly, while the state of California no longer qualifies persons as public accountants, it will renew public accountant permits of those individuals who held the authority to practice accounting in California as of 1968, provided that these individuals meet the same continuing education requirements imposed on CPAs. Public accountants also must comply with the same ethical standards and are subject to the same disciplinary actions as CPAs. California law provides that public accountants have the same rights and privileges as CPAs. Thus, a person who holds authority as a public accountant and a current California public accountant's permit, is, for practical purposes, a CPA, and is, therefore, eligible to practice before the IRS.

This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office at (202) 622-3400.

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