

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

CC:PA:RSGoldstein
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to: Deputy Director
Office of Professional Responsibility

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

subject: Delaware Public Accountants

This memorandum responds to your inquiry regarding practice before the Service by Delaware public accountants.

Issue

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

Conclusion

No. 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. While Delaware law provides that both CPAs and public accountants may practice public accountancy, only persons who hold a certificate may practice certified public accountancy. Thus, Delaware public accountants are not duly qualified to practice as a CPA. Accordingly, Delaware public accountants are **not** eligible to practice before the IRS by virtue of their public accountant's permit.

Facts

Two categories of individuals may practice public accountancy in Delaware: CPAs and public accountants. CPAs are holders of a certificates issued by the Delaware State Board of Accountancy pursuant to chapter 1 of title 24 of the Delaware Code or prior Delaware law. Del. Code Ann. Tit. 24, § 102(3) and (2) (2005). Public accountants are holders of a permit to practice public accountancy. Del. Code Ann. Tit. 24, § 102(9) (2005). "Public accounting" or the "practice of public accountancy" is the performance, or the offer to perform, for a client or a potential client, by a person or firm holding itself out to the public as a permit holder, one or more services involving the use of accounting or auditing skills or one or more kinds of management advisory, financial

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advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters. Del. Code Ann. Tit. 24, § 102(10) (2005). “Certified public accounting” or “the practice of certified public accountancy” is public accounting practiced by a certified public accountant. Del. Code Ann. Tit. 24, § 102(4) (2005).

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 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 The cumbersome admission procedures of the Internal Revenue Service seem unwarranted in their impact on duly qualified . . . certified public accountants.

Id. at 4.

Under Delaware law, any individual who intends to be engaged in, or is engaged in, the practice of certified public accountancy must obtain and maintain a valid permit. Del. Code Ann. Tit. 24, § 108(a) (2005). CPA permits are issued to certificate holders with the requisite accounting experience. Del. Code Ann. Tit. 24, § 108(c) (2005). Certificates are granted to any person who has good moral character, and holds a master’s, baccalaureate, or associate degree with a concentration in accounting from an accredited college or university or a degree from an accredited 2-year college with a concentration in accounting, provided that the person also passed the Uniform Certified Public Accountant Examination and the AICPA self-study course and examination in professional ethics. Del. Code Ann. Tit. 24, § 107(a) (2005).

Individuals who are not certificate holders, but who intend to be engaged in, or is engaged in, the practice of public accountancy must obtain and maintain a valid permit.

Del. Code Ann. Tit. 24, § 110(a) (2005). Public accounting permits are issued to any applicant who has good moral character, and holds, at a minimum, a degree from an accredited 2-year college with a concentration in accounting, provided that the applicant has also passed the AICPA self-study course and examination in professional ethics and either all parts of the examination recognized by the National Society of Public Accountants or the Accounting and Reporting and Auditing portions of the Uniform Certified Public Accountant Examination. Del. Code Ann. Tit. 24, § 110(c) (2005).

As stated above, Delaware issues permits to both public accountants and certified public accountants. Although both permits entitle the holder to practice public accountancy in the State, only persons who hold a certificate may practice certified public accountancy in Delaware. Further, a person is not required to pass all sections of the Uniform Certified Public Accountant Examination to qualify for a public accountant's permit, and an applicant for a public accountant's permit is not required to have same requisite accounting experience as a CPA. The requirements for obtaining a permit to practice public accountancy, therefore, are less stringent than those required to obtain a certificate and a permit to practice certified public accountancy. Thus, the State of Delaware has made a clear distinction between a public accountant and a CPA, and only the latter is duly qualified to practice as a CPA. Accordingly, if a person is not otherwise eligible to practice before the IRS, he is not eligible to practice before the IRS because he holds a valid Delaware public accountant's permit.

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 for our views.

If you have any questions, please contact this office at 202-622-3400.

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