

**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)

subject: Practice by South Carolina Public Accountants

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

ISSUES

1. Whether individuals who hold current public accountant licenses in South Carolina, but who are not certified public accountants, are eligible to practice before the IRS by virtue of their public accountants' status?
2. Whether individuals who hold current accounting practitioner licenses in South Carolina, but who are not CPAs or licensed public accountants, are eligible to practice before the IRS by virtue of their accounting practitioners' status?

CONCLUSION

1. 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 South Carolina law, persons who are licensed as South Carolina public accountants have the same rights and privileges as CPAs in that state. Thus, for purposes of Circular 230, public accountants who hold licenses to practice public accounting in South Carolina are eligible to practice before the IRS by virtue of their public accountant's license.
2. No. Under South Carolina law, persons who hold a South Carolina accounting practitioner's license do not have the same rights and privileges as CPAs or public accountants in that state. Thus, South Carolina accounting practitioners are not duly qualified to practice as CPAs, and, therefore, are not eligible to practice before the IRS by virtue of their accounting practitioner's license.

FACTS

Three categories of individuals may practice public accountancy in South Carolina: CPAs, public accountants, and accounting practitioners. Under South Carolina law, a CPA is a person holding a license to practice as a CPA issued under section 40-2-35 of the South Carolina Code of Laws. A public accountant is a person holding a license as a public accountant who was registered as a public accountant prior to January 1, 1972. An accounting practitioner is a person holding a license to practice as an accounting practitioner upon satisfaction of the requirements in section 40-2-550 of the South Carolina Code of Laws. South Carolina law further provides that 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. See S.C. Code Ann. §§ 40-2-20(2) and 40-2-30(B) (Law. Co-op. 2004). On the other hand, accounting practitioners may not perform all of the same professional services that may be performed by a CPA or public accountant. See S.C. Code Ann. § 40-2-30.

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., 1st Sess. (October 25, 1965). In explaining why CPAs are not subject to the IRS'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 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.

Under South Carolina law, it is unlawful for a person to engage in the practice of public accountancy as regulated by the South Carolina Board of Accountancy (the Board) without holding a valid license or registration¹. S.C. Code Ann. § 40-2-30(A). The Board issues annual licenses to practice public accountancy to CPAs, public accountants, and accounting practitioners.

CPA licenses are generally granted by the Board to persons who have satisfied certain education requirements, which include a set amount of accounting and business-related coursework, have passed the required uniform national CPA written examination, have passed the ethics examination, have satisfied certain experience requirements², and have evidence of good moral character. S.C. Code Ann. § 40-2-35. Prior to January 1, 1972, a person who was not a licensed CPA could register with the Board and become licensed as a public accountant³. The Board stopped registering public accountants on January 1, 1972, but those individuals who were licensed public accountants previously are permitted to continue to practice public accounting by renewing their license annually and complying with the rules and regulations to which CPAs are subject. See S.C. Code Ann. § 40-2-250; S.C. Code Ann. § 40-1-260, repealed by 1985-1986 S.C. Acts 447.

Additionally, a person who is not a licensed CPA or public accountant may obtain a South Carolina accounting practitioner's license. Accounting practitioner licenses are granted by the Board to a person who successfully passed an examination approved by the Board and has a bachelor's degree with a major in accounting from an accredited college or university, provided the person attained the age of 18 years, does not have any history of dishonest or felonious acts, and is a resident of South Carolina or has a place of business in the State or is regularly employed in the State. S.C. Code Ann. § 40-2-550.

Applications for renewal of a license must include current information concerning practice status, a verified continuing education report, and a renewal fee. S.C. Code Ann. § 40-2-250(B). CPAs, public accountants, and accounting practitioners must document 40 hours of acceptable continuing education each year in the verified report of continuing education in order to renew their licenses to practice public accounting. S.C. Code Ann. § 40-2-250(C). Furthermore, CPAs, public accountants, and

¹ Persons licensed in another state or country may receive a license in South Carolina upon the showing of education, examination, and experience standards substantially equivalent to those in effect in South Carolina. S.C. Code Ann. § 40-2-240.

² In general, at least two years of accounting experience under the direct supervision and review of a licensed CPA or licensed public accountant is required. Five years of experience teaching accounting courses in a college or university is generally considered equivalent to the two years of accounting experience. S.C. Code Ann. § 40-2-35(A)(4).

³ In order to have registered with the Board as a public accountant prior to January 1, 1972, a person must (1) have resided in the State or had a place of business therein, (2) have attained the age of twenty-one years, (3) have been of good moral character, and (4) have generally held themselves out to the public as public accountants and been engaged as a principal or partner in the practice of public accounting within the State on June 11, 1969. S.C. Code Ann. § 40-1-260, repealed by 1985-1986 S.C. Acts 447.

accounting practitioners may be disciplined and potentially lose their license to practice for any one or more of the violations listed in section 40-2-110.

Section 40-2-30(B) of the South Carolina law provides that only licensed CPAs or public accounts may issue a report on financial statements of a person, firm, organization, or governmental unit or offer to render or render any attest or compilation service. Attest is defined as “an audit or other engagement to be performed in accordance with the Statements on Auditing Standards; or (b) a review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS); or (c) an examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements. S.C. Code Ann. § 40-2-20(2). Licensed CPAs and public accountants must perform these services in accordance with professional standards. S.C. Code Ann. § 40-2-335. Accounting practitioners, however, may only prepare financial statements and issue nonattest transmittals or information thereon which do not purport to be in compliance with SSARS. S.C. Code Ann. § 40-2-20(3).

Accordingly, while the state of South Carolina no longer licenses new applicants as public accountants, the State issues licenses to practice public accounting to persons who were registered as public accountants prior to January 1, 1972. These individuals must 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. Further, any professional services required to be performed by a CPA may be performed by a CPA or public accountant. Thus, any person who holds a current public accountant’s license in the state of South Carolina is, therefore, for practical purposes, a CPA and is eligible to practice before the IRS⁴.

On the other hand, accounting practitioners in South Carolina may not perform all professional services required to be performed by a CPA or public accountant. Thus, South Carolina accounting practitioners are not 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 South Carolina accounting practitioner’s license.

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.

cc: Associate Chief Counsel (General Legal Services)
Attn: Kirsten Witter

⁴ We telephoned the South Carolina Board of Accountancy to inquire about the number of public accountants in the State, and were informed that there are approximately 25 active public accountants in the State.