

**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 New York Public Accountants

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

ISSUES

Whether individuals who hold current public accountant licenses in New York, 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 New York law, persons who are licensed as New York 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 New York are eligible to practice before the IRS by virtue of their public accountant's license.

FACTS

Two categories of individuals may receive licenses to practice public accountancy in New York: CPAs and public accountants. Under New York law, a CPA is a person holding a license to practice as a CPA issued under section 7404 of the Education Law of New York. A public accountant is a person holding a license to practice as a public accountant issued under section 7405 of the Education Law of New York.

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 New York law, the New York State Education Department issues licenses to CPAs or public accountants to engage in the practice of public accounting in the state. N.Y. Educ. Law §§ 7404 and 7405 (2001).

CPA licenses are generally granted to applicants who have satisfied certain education requirements, which include a bachelor's or higher degree based on a program in accountancy¹, have successfully passed the required uniform national CPA written examination, have satisfied certain experience requirements², have attained the age of 21, and have evidence of good moral character. N.Y. Educ. Law § 7404. On the other hand, as a result of a one-time provision of a 1959 NY licensing law, a public

¹ Applicants may submit 15 years of public accounting experience in place of college preparation. N.Y. Comp. Codes R. & Regs. tit. 8, § 70.1(b).

² In general, at least two years of accounting experience is required of an applicant although one year of experience is required for an applicant with advanced professional education experience. N.Y. Comp. Codes R. & Regs. tit. 8, § 70.2(a). Such experience shall be attested to by the licensed CPA or licensed public accountant who acted in a supervisory capacity to the applicant. Id.

accountant's license in New York is based solely upon an applicant's previous public accounting experience. An applicant for a New York public accountant's license must have filed a declaration of intention to practice as a public accountant on or before October 1, 1959. N.Y. Educ. Law § 7405. In addition, an applicant must have had a minimum of six years of public accounting experience between April 23, 1949 and April 23, 1959, and have had evidence of good moral character. Id.

Licensed CPAs and public accountants must document 40 hours of acceptable formal continuing education in recognized areas of study or 24 hours of acceptable formal continuing education concentrated in auditing, accounting, or taxation in order to register triennially with the New York State Education Department. N.Y. Educ. Law § 7409. A licensee who does not obtain a triennial registration certificate by the department shall not practice public accountancy in New York. Id. Accordingly, the State of New York stopped licensing new applicants as public accountants on October 1, 1959, but persons licensed with the State as public accountants prior to October 2, 1959, may register to practice public accounting in the State triennially, provided they meet the same continuing education requirements for CPAs³.

Public accountants also must comply with the same ethical standards and are subject to the same disciplinary actions as CPAs. N.Y. Comp. Codes R. & Regs. tit. 8, §§ 17.6, 29.1, and 29.10. Further, any professional services required to be performed by a CPA may be performed by a CPA or public accountant. N.Y. Educ. Law. §§ 7401 and 7402. Thus, public accountants in the State of New York have the same rights and privileges as CPAs. Any person who holds a current public accountant's license in the state of New York is, therefore, for practical purposes, a CPA and is 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 for our views.

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

cc: Associate Chief Counsel (General Legal Services)
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³ The New York State Education Department website indicates that there are currently 220 registered public accountant licensees in the state and 30 outside the state.