

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

CC:PA:APJP:B2:LEMack  
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date: February 2, 2007

to: Deputy Director  
Office of Professional Responsibility

Richard S. Goldstein  
from: Special Counsel to the Associate Chief Counsel  
(Procedure & Administration)

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subject: Practice by Montana Public Accountants

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

ISSUE

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

CONCLUSION

Yes. Section 500(c) of title 5 of the United States Code and its 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 Montana law, persons in Montana who are licensed 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 Montana are eligible to practice before the IRS by virtue of their public accountant's license.

FACTS

Two categories of individuals may receive a certificate or license to practice public accountancy in Montana: CPAs and public accountants. Under Montana law, a CPA is a person holding a certificate to practice as a CPA issued under section 37-50-302 of the Montana Code Annotated. A public accountant is a person holding a license to practice as a public accountant issued under section 37-50-303 of the Montana Code Annotated.

**PMTA 2010-43**

## 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 Montana law, the Montana Board of Public Accountants (“Board”) issues certificates, licenses and permits to CPAs and public accountants to engage in the practice of public accounting in the state. Mont. Code Anno. §§ 37-50-201, 203, 302 and 303 (2006); Mont. Admin. R. 24.201 et seq.

CPA certificates are generally granted to applicants who have satisfied certain education requirements, which include a baccalaureate degree with a concentration in accountancy, have successfully passed the Audit, Financial Accounting and Reporting, Business Environment and Concepts and Regulation sections of the required uniform national CPA written examination, have satisfied certain experience requirements<sup>1</sup>,

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<sup>1</sup> In general, at least 2,000 hours with 500 of attest-oriented experience, or 4,000 hours of accounting work acceptable to the Board. Mont. Admin. R. 24.201.502.

successfully pass an open book ethics examination,<sup>2</sup> and have evidence of good moral character. Mont. Code Anno. § 37-50-302; Mont. Admin. R. 24.201.501.

Public accountant licenses are also granted to applicants who have satisfied certain education requirements identical to that required of CPAs, have successfully passed three sections of the required uniform national CPA written examination,<sup>3</sup> have satisfied certain experience requirements identical to those required of CPAs, successfully pass an open book ethics examination,<sup>4</sup> and have evidence of good moral character. Mont. Code Anno. §§ 37-50-303 and 304; Mont. Admin. R. 24.201.501.

Both certified CPAs and licensed public accountants (“LPA”) must document 120 hours of acceptable continuing education in any three year reporting period, with a minimum of 24 hours of accounting/auditing course credits and 2 hours of specific ethics course credit. Mont. Admin. R. 24.201.2106 and 2108. A person may not engage in the practice of public accounting in Montana without a current permit, and a permit must be issued by the State to a person who holds a current certificate as a CPA or license as an LPA and otherwise complies with the requirements outlined above. Mont. Code Anno. § 307-50-314.

LPAs also must comply with the same ethical standards and are subject to the same disciplinary actions as CPAs. Mont. Admin. R. 24.201.2401 et seq. In addition, LPAs and CPAs are subject to the same standards of independence, competence, integrity and objectivity, auditing standards, accounting principles and other technical standards. Mont. Admin. R. 24.201.701 et seq. Further, any professional services required to be performed by a CPA may be performed by a properly permitted CPA or LPA. Mont. Code Anno. § 307-50-314; Mont. Admin. R. 24.201.301(1)(f) and 415. Thus, LPAs in the State of Montana have the same rights and privileges as CPAs. Any person who holds a current public accountant’s license in the state of Montana and has obtained the permit required to practice public accounting in Montana 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.

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<sup>2</sup> Mont. Admin. R. 24.201.510(2).

<sup>3</sup> Section 37-50-304(1) also provides that “[a] person serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering the armed forces represented to the public that the person was a public accountant and who was engaged as a principle in this state in the practice of public accounting as the person’s principle occupation prior to service in the armed forces” may be issued a license if such person registers with the board within 6 months of his or her separation from active service. A principle is either the owner of or partner in an existing accounting practice on July 1, 1969.

<sup>4</sup> Mont. Admin. R. 24.201.510(2).

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