

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

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date: February 5, 2007

to: Deputy Director
Office of Professional Responsibility
Attn: Mike Hahn

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

subject: Practice by New Hampshire Public Accountants

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

ISSUES

Whether individuals who hold current public accountant permits in New Hampshire, 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 Hampshire law, persons who are issued a permit as New Hampshire 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 Hampshire are eligible to practice before the IRS by virtue of their public accountant's permit.

FACTS

Two categories of individuals may receive licenses to practice public accountancy in New Hampshire: CPAs and public accountants. Under New Hampshire law, a CPA is a person holding a license to practice as a CPA issued under New Hampshire's Revised Statutes Annotated (the RSA) section 309-B:4. A public accountant is a person issued a permit under RSA 309-B:5.

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LAW AND ANALYSIS

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

An individual who is *duly qualified to practice* as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that 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.

Emphasis added. 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 phrase "qualified to practice as a CPA" suggests that the authority to practice before the Service under 5 U.S.C. § 500(c) is not limited to persons who are CPAs in fact, but includes those persons who are licensed to perform the same services as CPAs in any State.

Under section 309-B:5.I of the RSA, a certificate of "certified public accountant" may be granted to persons of character who meet the education, experience, and examination requirements of this section, who make application therefor pursuant to section 309-B:7 of the RSA, and who pay the fees prescribed by the New Hampshire Board of Accountancy. On the other hand, section 309-B:9.I of the RSA provides that persons who on January 1, 2000 hold registrations as public accountants¹ issued under prior law of New Hampshire are entitled to have their registrations renewed upon fulfillment of the continuing professional education requirements for renewal of certificates set out in section 309-B:7 of the RSA, and on the renewal cycle and payment of fees there prescribed for renewal of certificates. Thus, public accountants and CPAs are subject to the same requirements under section 309-B:7 of the RSA.

Section 309-B:7 of the RSA sets forth the rules regarding the issuance and renewal of CPA licenses, and permits for public accountants. Section 309-B:7.II states:

Certificates shall be initially issued, and renewed, for periods of not more than 3 years. Annual periods shall coincide with the state's fiscal year, beginning on July 1 and ending on the subsequent June

¹ The Executive Director for the New Hampshire Board of Accountancy advised this office that there are currently 45 registered public accountant licensees in the state.

30. Applications for such certificates shall be made in such form, and in the case of applications for renewal, between such dates, as the board shall by rule specify. A certificate shall remain valid for the period of time that the board requires to act on the application for renewal, provided that the renewal was submitted in accordance with the rules adopted by the board. The board shall grant or deny any application no later than 90 days after the application is filed in proper form. In any case where the applicant seeks the opportunity to show that issuance or renewal of a certificate was mistakenly denied, or where the board is not able to determine whether it should be granted or denied, the board may issue to the applicant a provisional certificate, which shall expire 90 days after its issuance or when the board determines whether or not to issue or renew the certificate for which application was made, whichever shall first occur.

Additionally, section 308-B:8 provides that public accountants and CPAs are subject to the same rules regarding firm permits to practice, attest experience, and peer review. For example, section 309-B:8.III(a) states that an applicant for initial issuance or renewal of a permit to practice as a public accountant or CPA is required to show that:

A 51 percent majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state of the United States and such partners, officers, shareholders, members, or managers, whose principal place of business is in this state, and who perform professional services in this state, hold a valid certificate [as a CPA] issued under RSA 309-B:5 or the corresponding provisions of prior law or are public accountants licensed under RSA 309-B:9.

Moreover, section 309-B:7.VII of the RSA provides the same renewal and continuing education requirements for both public accountants and CPAs. Further, section 309-B:9.III of the RSA provides that public accountants are entitled to perform the same services to the same extent as CPAs. Thus, public accountants in the State of New Hampshire have the same rights and privileges as CPAs.

Any person who holds a current public accountant's permit in the state of New Hampshire 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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