

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

CC:PA:APJP:B02:SLKaron
POSTN-100117-07

date: March 13, 2007

to: Director, Office of Professional Responsibility
Attn: Michael Hahn

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

subject: Practice by Kansas Public Accountants

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

ISSUE

Whether individuals who practice public accountancy in Kansas, 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 Kansas law provides that CPAs and others may practice public accountancy, only persons who hold a permit to practice may practice as a certified public accountant. Thus, for purposes of Circular 230, individuals who are not permitted to practice as a CPA are not eligible to practice before the IRS by virtue of their practice of public accountancy.

FACTS

The public practice of accountancy in Kansas can be divided into two components: the practice of certified public accountancy, which generally requires a certificate issued by the Kansas State Board of Accountancy and a permit to practice, and the practice of public accountancy. Kan. Stat. Ann. §§ 1-302, 1-302(b), 1-321. The practice of certified public accountancy is the performing or offering to perform attest or nonattest services for the public while using the designation "certified public accountant" or "C.P.A." in conjunction with such services. Kan. Stat. Ann. § 1-321(q). The practice of public

PMTA 2010-46

accountancy means performing or offering to perform attest or non attest services for the public by a person not required to have a permit to practice or a firm not required to register with the board. Kan. Stat. Ann. § 1-321(r).

As mentioned previously, it is unlawful for any person to practice certified public accountancy unless the person holds a valid permit issued by the Kansas Board of Accountancy. Kan. Stat. Ann. § 1-316(a). Additionally, it is unlawful for any person, except the holder of a valid Kansas certificate to use the title “certified public accountant” or the abbreviation “C.P.A.”. Kan. Stat. Ann. § 1-316(c).

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 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 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 the State has authorized to perform the same services as CPAs.

In general, the practice of public accountancy is not prohibited or regulated by the State of Kansas. Kan. Stat. Ann. § 1-318(e).¹ It is, however, unlawful for any person, except the holder of a permit to practice certified public accountancy, to engage in the practice of certified public accountancy or to issue a report on financial statements that references the American institute of certified public accountants. Kan Stat. Ann. § 1-316(a) and (e). The Kansas Board of Accountancy issues permits to practice certified public accountancy to certificate holders who have the requisite accounting experience. Kan. Stat. Ann. § 1-302b. Certificates are granted to any person who has good moral character and is a resident of the state or has a place of business or is employed in the state, has meet particular educational requirements, and has passed an examination in accounting, auditing, and other related subjects determined appropriate by the board of accountancy. Kan. Stat. Ann. § 1-302. The educational requirements required to obtain a certificate are satisfied by successfully completing coursework consisting of at least 150 semester hours, with a concentration of

¹ Because the practice of public accountancy is not regulated, it was not possible to accurately ascertain the number of individuals practicing public accountancy in the State.

accounting, at a college or university recognized by the board, and holding a baccalaureate or higher academic degree. Kan. Stat. Ann. § 1-302(a).

As stated previously, the practice of public accountancy is subject to significantly lesser restrictions than the practice of certified public accountancy in the State of Kansas. See Kan. Stat. Ann. § 1-316. The State has made a clear distinction between those persons who practice certified public accountancy and those persons who practice public accountancy, as only the former may issue a report on financial statements that references the American institute of certified public accountants or can use the designation "certified public accountant." Accordingly, a person who practices public accountancy in the state of Kansas is not qualified to practice as a CPA. Therefore, if a person is not otherwise eligible to practice before the IRS, his work as a public accountant in the state of Kansas will not make him 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)
Attn: Kirsten Witter