

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

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

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

subject: Maine Public Accountants

This memorandum responds to your inquiry regarding practice before the Internal Revenue Service by Maine public accountants.

ISSUE

Whether individuals who hold current public accountant licenses in Maine, 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 certified public accountant in any State, or possession of the United States or the District of Columbia may represent a person before the IRS. Under Maine law, persons who are licensed as Maine public accountants have the same rights and privileges as certified public accountants in that state. Thus, for the purposes of Circular 230, public accountants who hold certificates to practice accounting in Maine are eligible to practice before the IRS by virtue of their public accountant's certificate.

FACTS

Maine allows all persons to practice accounting and engage in services which involve accounting or auditing skill, including management advisory or consulting services, the preparation of tax returns and the furnishing of advice on tax matters. But, the State only allows certified public accountants and public accountants to issue reports on financial statements.

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. Paragraph (c) of this section provides that an individual who is qualified to practice as a certified public accountant 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 on 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 certified public accountant, in relevant part, as any person who is duly qualified to practice as a certified public accountant in any State. Section 10.3(b) further provides that any certified public accountant 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 certified public accountant and is authorized to represent the party or parties on whose behalf he or she acts.

The phrase “qualified to practice as a certified public accountant” suggests that the authority to practice before the Service under 5 U.S.C. §500(c) is not limited to persons who are certified public accountants in fact, but includes those persons who the State has authorized to perform the same services as certified public accountants.

Section 12202 of title 32 of the Maine Revised Statutes Annotated provides that “[a]nyone may practice accounting and engage in services which involve accounting or auditing skills, including management advisory or consulting services, the preparation of tax returns and the furnishing of advice on tax matters.” The statute further provides, however, that no one except a licensee may represent that he is a licensee or issue a report on financial statements. Me. Rev. Stat. Ann. Tit. 32, § 12202 (2007). A licensee is a person who holds a valid certificate as a certified public accountant or a public accountant and has fulfilled his continuing professional education requirements. Me. Rev. Stat. Ann. Tit. 32, § 12251 (2007).

Maine grants a certificate as a certified public accountant to any person who has good moral character, has completed the education requirement that includes at least 150 semester hours of education, including a minimum of four-year baccalaureate or higher degree conferred by a college or university acceptable by the board. Me. Rev. Stat. Ann. Tit. 32, §12228 (2007). The applicant must also successfully pass an examination administered by the Board of Accountancy and pay the administration fee. Id. Finally, an applicant must have two years of experience under the direction of a certified public accountant licensed by any state or territory of the United States or its equivalent. Id.

Similarly, Maine issues a public accountant certificate to any person who is of good moral character, has completed a baccalaureate degree or its equivalent, successfully

passed an examination approved by the Board of Accountancy¹, and has two years experience in the practice of public accountancy (1 year if the person has a master's degree) or its equivalent.² Me. Rev. Stat. Ann. Tit. 32, § 12240. Further, Maine requires its public accountants to meet the same continuing professional education requirements (20 hours of professional education in each one-year period and not less than 120 hours in any three-year period) that it requires its certified public accountants to renew their licenses.

Accordingly, public accountants in the State of Maine have the same rights and privileges as certified public accountants. Thus, any person who holds a current certificate of public accountant in the state of Maine is, therefore, for practical purposes, a certified public accountant 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 at (202) 622 3400.

¹ The Board of Accountancy has advised us that it no longer administers the public accountant's examination.

² According to the Maine Board of Accountancy, approximately 30 licensees hold Maine public accountant certificates, but the Board has not issued any new certificates to public accountants in several years. Further, the Board of Accountancy is not anticipating the issuance of any new certificates to public accountants because the Board no longer administers the public accountant's examination.