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Issue Number: 2026-5. Drawing the Line: Tax Return Preparation vs. Practice

Tax professionals who represent taxpayers before the IRS or otherwise engage in practice before the IRS are, as “practitioners,” subject to the rules and standards of conduct and the disciplinary provisions of [Circular 230](#), *Regulations Governing Practice before the Internal Revenue Service*.¹ The Circular 230 regulations are administered and enforced by the IRS Office of Professional Responsibility (OPR). Unlike other professionals in the tax services industry, “practitioner” is a special term in the context of Circular 230. It is critical to understand the distinction between “practitioners” versus other professionals who have different, more limited roles in assisting taxpayers before the IRS.

What is the distinction?

To be considered a practitioner, an individual must first be eligible to “practice” before the IRS. “Practice” has a specific, controlling definition, emanating from federal law and regulations. The definition originates with 31 USC 330,² which authorizes the Secretary of the Treasury (and by extension the IRS and the OPR) to “regulate the *practice* of representatives of persons before the Department of the Treasury” (emphasis added).

As to how “practice” is defined in Circular 230, section 10.2(a)(4) states:

Practice before the Internal Revenue Service comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

Note that merely preparing tax returns, including paid preparation, is not “practice” before the IRS.³

¹ The regulations are codified in Title 31 of the Code of Federal Regulations (CFR) Part 10. Each section of Circular 230 is a regulation (10.0, 10.1, 10.2, etc.).

² The regulations in Circular 230 are promulgated under and implement the statute.

³ See *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014), in which the federal circuit court of appeals for the District of Columbia held that preparing tax returns is not “practice . . . before the Department of Treasury” under the statute in the U.S. Code, Title 31 (section 330) referenced above. The court also held that tax return preparers are not agents/representatives, stating, “The term ‘representative’ is traditionally and commonly defined as an agent with authority to bind others, a description that does not fit tax-return preparers. . . . Put simply, tax-return preparers are not agents.” 742 F.3d at 1016-1017. See also [Publication 947](#), *Practice Before the IRS and Power of Attorney* (p.3) (“Any individual may for compensation prepare or assist with the preparation of a tax return or claim for refund, ap-

Also, as indicated, not everyone in the tax, accounting, financial consulting and advisory, and similar professions who assist clients with federal tax matters is a Circular 230 “practitioner.” Practitioners are designated (along with definitions or descriptions) in the circular as:

- Attorneys
- Certified public accountants (CPAs)
- Enrolled agents (EAs)
- Enrolled retirement plan agents (ERPAs), and
- Enrolled actuaries.

See section 10.2(a)(5), in conjunction with sections 10.2(a)(1), (2) and 10.3(a)-(e).

In addition to “practitioners,” other individuals can perform “limited practice,” allowing them to represent taxpayers before the IRS as specified in section 10.7(c)(1).⁴ These individuals include officers and employees of a business taxpayer (for example, a corporation’s chief financial officer), partners of a partnership, and immediate family members of an individual taxpayer.

Likewise, individuals who participate in the IRS’s voluntary [Annual Filing Season Program](#) (AFSP) (under Revenue Procedure [2014-42](#), 2014-29 I.R.B. 192) have limited authority to represent taxpayers before the IRS. Specifically, the AFSP enables tax return preparers who are not also Circular 230 practitioners to represent taxpayers in examinations of tax returns that the preparer prepared and signed. Under the AFSP, participants consent to be subject to the duties and restrictions relating to practice in Circular 230 (Subpart B) and the prohibitions against incompetence and disreputable conduct in section 10.51; and program eligibility and participation are subject to additional conditions.

Benefits come with expectations

A key, twofold significance of being a Circular 230 practitioner is that:

- (1) Those who hold the status have generally⁵ unlimited practice privileges.
- (2) While at the same time, all of the circular’s conduct standards (the dos and don’ts) apply to the individual, along with liability for potential violations.

Among the standards are obligations of:

appear as a witness for a taxpayer before the IRS, or furnish information at the request of the IRS or any of its officers or employees.”).

⁴ For reference, see also 26 CFR 601.502(b), in Subchapter E of the IRS Statement of Procedural Rules (Part 601) (reprinted as [Publication 216](#), Conference and Practice Requirements).

⁵ ERPAs and enrolled actuaries may appear before IRS personnel and act on behalf of taxpayers at all levels of the agency, but only as to certain issues and matters. Those involving employee plans, in the case of ERPAs. And for enrolled actuaries, specific sections or provisions of the tax code and USC Title 29 (Labor, Ch. 18, ERISA), such as IRC 401 (Qualified Pension, Profit-Sharing, and Stock Bonus Plans), 419 (Treatment of Funded Welfare Benefit Plans), and 6059 (Periodic Report of Actuary).

- Competence and due diligence; honesty and integrity in dealings with the Service and in matters of client representation; and factual and legal accuracy in written tax advice; and
- Avoidance of conflicts of interest and disreputable conduct, such as participating in tax evasion efforts, advising or assisting clients to violate any federal tax law or counseling or suggesting to them any plan to unlawfully avoid liability for or payment of taxes.

Failure to comply with these standards can result in applicable sanctions, which are censure, suspension or disbarment from practice before the IRS, and monetary penalties (see section 10.50(a) and (c)).

Conclusion

Knowing the criteria for who is a Circular 230 practitioner is important, especially for those individuals who are just entering the tax profession. And also for some who have already established themselves in the business of tax services. More precisely, those who have so far done only tax return preparation and some limited tax planning for clients that, based on the circumstances, did not rise to the level of practice before the IRS; so, they have yet to undertake any tax controversy work but are or may be considering expanding into the area.

Please don't, as beginners, jump into the representation of taxpayers without first having a solid understanding of Circular 230, including its eligibility-to-practice requirements. Similarly, don't get confused – don't think or assume that because you have one of the necessary professional credentials, you are invariably authorized to represent taxpayers and advise and assist them with their tax matters pending before the IRS. If a practitioner's credential-based authority lapses for some reason, they cannot practice before the IRS until their standing as eligible practitioners is restored. This can happen, for example, when an attorney voluntarily elects inactive status, a CPA neglects to renew their license or certificate, or an EA fails to timely renew enrollment (even if for only a relatively short period).

Careful practitioners should be mindful of maintaining continuous, uninterrupted authority to practice and of the statements attested to under penalties of perjury in Part II of Form 2848, Declaration of Representative. Doing so contributes in its own way to high quality and meaningful taxpayer representation that are indispensable to fair and effective federal tax administration.