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Issue Number: 2026-23. Unreasonable Delay: *"Don't put off until tomorrow what you can do today" -- Benjamin Franklin*

Expeditious resolution of federal tax matters is not only in the best interest of the IRS and taxpayers, but also a professional obligation for those who represent taxpayers as clients before the IRS. Tax practitioners often serve as the bridge between taxpayers and the agency: facilitating communications, helping to ensure compliance with the internal revenue laws, and advocating for their clients. However, failure to act promptly or engaging in practices that lead to unnecessary hold-ups can be detrimental to both the taxpayers' interests and the integrity and effective administration of the tax system. Uncalled-for delays may trigger investigation and potential disciplinary or other action, which may impact a practitioner's ability to represent clients in the future.

All tax professionals eligible by virtue of their credentials to advance their clients' interests in IRS matters are required to comply with Circular 230, the set of regulations governing practice before the IRS, which are codified in Title 31 of the Code of Federal Regulations (CFR), Part 10.[1] The professionals covered are **[i]** attorneys, certified public accountants (CPAs), enrolled agents, enrolled retirement plan agents, and enrolled actuaries ("practitioners," defined in Circular 230 section 10.2(a)(5) [2]); **[ii]** appraisers; and **[iii]** tax return preparers granted limited practice privileges under the IRS Annual Filing Season Program (AFSP). With respect to these individuals, the Office of Professional Responsibility (OPR) oversees adherence with and enforces the regulations' rules, to uphold ethical conduct by those who practice.

Standards and Obligations

Section 10.23 of Circular 230 specifically addresses the "Prompt Disposition of Pending Matters," emphasizing that practitioners must not unreasonably delay the progress of any IRS conducted matter. Including in their handling of requests for documents and other records or information (in whatever format it's stored and available or reproducible).

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[1] Sections 10.0 – 10.93.

[2] Section 10.2, "Definitions," also defines "attorney," "certified public accountant," and "practice," in paragraphs (a)(1), (a)(2) and (a)(4), respectively. These definitions operate in conjunction with section 10.3, "Who may practice."

Note: Section 7602 of the IRC, *Examination of Books and Witnesses*, grants the IRS broad information gathering authority. As stated in subsection (a), the "purpose" of exercising the authority is for "ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability . . . of any transferee or fiduciary of . . . [the] person . . . , or collecting any such liability[.]"[3]

To those ends, the Service can "examine any books, papers, records, or other data which may be relevant or material" and summon taxpayers and third-party record keepers to produce the items, as well as to testify under oath.

Section 10.20, "Information to be Furnished," in paragraph (a) mandates that, upon receiving a proper and lawful request from an IRS employee, practitioners must promptly submit the requested records or information. If a practitioner withholds materials as privileged, they must do so in "good faith,"[4] based on "reasonable grounds," and must claim the privilege(s) in their reply to the IRS.

IRS employees rely on internal procedures outlined in the Internal Revenue Manual (IRM) for dealing with non-responsive, uncooperative, or dilatory representatives. Among these procedures are establishing clear expectations and deadlines, escalating concerns to management, and using enforcement actions, such as preparing substitutes for return (SFRs) or issuing and enforcing summonses.

Resorting to "Bypass"

If delays persist, compliance and civil investigatory employees can initiate a bypass, and once it's approved, contact the taxpayer directly, instead of interacting solely through their representative.

Under IRC 7521(c) and related procedural regulations (see 26 CFR 601.506(b)),[5] if a practitioner is deemed responsible for unreasonable delay or hindrance in an examination, collection case, or investigation, IRS employees, with supervisory approval, may notify the taxpayer directly of the issue. Bypass must be supported by adequate case-file documentation.

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[3] The scope of authority extends to "inquiring into any offense connected with the administration or enforcement" of the tax laws. Treasury regulation 301.7602-1(a)(1); IRC 7602(b).

[4] "Good faith" means what one would expect, namely, a "sincere intention to be honest and law-abiding." *American Heritage Dictionary*, Harper Collins, 2025, https://www.ahdictionary.com. Accessed 20 July 2026. See also BLACK'S LAW DICTIONARY (12th ed. 2024) ("A state of mind consisting in [certain aspects , including] (1) honesty in belief or purpose . . . [or] (2) faithfulness to one's duty or obligation, ...").

[5] This provision is included within the IRS Statement of Procedural Rules, which are located in Part 601 of Title 26 of the CFR, and, specifically, in Subpart E, Conference and Practice Requirements (sections 601.501-601.509).

The bypass process allows the IRS to move forward with the open inventory item by communicating straight away with the taxpayer, including obtaining previously requested information, when the representative fails to supply the (non-privileged) information after repeated requests.[6]

It is important to note that a bypass does not automatically disqualify the practitioner from continuing to represent the taxpayer or other clients. Only the OPR has the authority to restrict, as a disciplinary measure, a practitioner from IRS representation. And the sanction (if pursued) would ordinarily arise from a referral to our office of suspected violations of section 10.23, section 10.20(a), both, or when combined with other sections that could be implicated (like 10.22 (failure to exercise due diligence)). And further, only at the end of an investigation and its findings and a decision on the appropriate course of action.

Key Takeaways

Proactive and thorough attention to and completion of IRS requests, coupled with detailed documentation and organized recordkeeping, are integral to safeguarding your entitlement to continued IRS practice and your clients' best interests.

- **Take action sooner rather than later:** Try to always answer the IRS without unnecessary delay. Well-timed exchanges are critical to maintaining trust and rapport.
- **Buttress your privilege claims:** If you withhold anything as privileged, ensure you have a valid, legally sound basis (see more below) and tell the IRS what it is.
- **Review your firm's or office's in-house procedures:** Regularly assess your processes so they align with Circular 230 requirements. Consider implementing internal policies for tracking deadlines, handling privileged material, training staff on their file maintenance responsibilities, and so on.
- **Keep a thorough historical compilation, a chronology of the chain of events:** Retain sufficiently detailed and well-organized paper and electronic records of all:
    - Correspondence and other communications from and to the IRS;
    - Meetings, conferences, and telephone calls with staff from the applicable business unit;

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[6] The IRS's repository of standard letters and notices contains letters for compliance personnel's use to effectuate (communicate) the bypass. For example –
- In the examination context: Letter 4020-A, Warning for Bypass Procedures for Preparers Covered under Circular 230, and Letter 4020-C, Final Bypass (this letter is sent to the representative notifying them of the bypass, with a copy sent to the represented taxpayer).
- In the collection context: Letter 4016-B, Bypass Letter (Power of Attorney) (for revenue officers' use as notice of the bypass, and likewise routed to both the representative (as the addressee) and the taxpayer (copied)).

- And instances (if any) where you withheld or temporarily postponed transmittal of information.

- **Collaborate with clients:** Update your clients about the status of their cases, especially when the IRS initiates an audit or enforcement action or a new stage in an ongoing one. Transparency helps stabilize the shared relationship and can mitigate client concerns.

Privileges

Viable ones that can be claimed are typically:

- | The attorney-client privilege, which essentially protects confidential communications between a client and their attorney (or a non-lawyer assistant/subordinate) relating to the client's request for legal advice.[7]

- | The attorney work product doctrine, protecting work products prepared by an attorney for a client in anticipation of litigation.[8]

- | The Fifth Amendment privilege against self-incrimination, which "guarantees each individual the right to remain silent without penalty and, more specifically, the right not to be compelled to produce testimonial or communicative evidence that may be incriminating."[9] It can be invoked when the person asked by a governmental authority for information faces "real" (not remote or speculative) "substantial hazards" of incriminating themselves if they were to provide the information requested.[10]

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[7] As to its precise elements, see, for example, the Supreme Court's decision in *Upjohn Co. v. United States*, 449 U.S. 383, 398 (1981); see also *N.L.R.B. v. Interbake Foods*, LLC, 637 F.3d 492, 501–02 (4th Cir. 2011).

[8] See, e.g., *Am. First Legal Found. v. U.S. Dep't of Just.*, 805 F. Supp. 3d 187, 215 (D.D.C. 2025) (holding that "the attorney work-product privilege shields materials prepared in anticipation of litigation") (internal citations and quotation marks omitted). The doctrine at "its core[,] . . . shelters the mental processes of the attorney, providing a privileged area within which he can analyze and prepare" a client's case. *United States v. Heppner*, 820 F. Supp. 3d 292, 297 (S.D.N.Y. 2026) (quoting *United States v. Nobles*, 422 U.S. 225, 238 (1975)).

[9] David M. Greenwald, Michele L. Slachetka & Caroline L. Meneau, TESTIMONIAL PRIVILEGES, Vol. 2, Ch. 4, section 4.1 *The privilege against self-incrimination defined* (3d ed. (Jul. 2025 Update)) (internal footnote with citation omitted).

[10] *Zicarelli v. New Jersey State Comm'n of Investigation*, 406 U.S. 472, 478 (1972); *California v. Byers*, 402 U.S. 424, 429 (1971).

- | The practitioner privilege in IRC 7525, *Confidentiality privileges relating to taxpayer communications* (added by RRA '98[11]), which is intended to shield from disclosure taxpayers' communications principally with CPAs and enrolled agents.[12]

  A taxpayer or a representative on behalf of the taxpayer can assert the privilege in "any noncriminal tax matter before" the IRS, and the section's general rule is that:

  > With respect to tax advice, the same common law protections of confidentiality which apply to a communication between a taxpayer and an attorney shall also apply to a communication between a taxpayer and any federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney.

  The section has two definitions used in applying the rule. First, a "federally authorized tax practitioner" is denied as "any individual who is authorized under Federal law to practice before the . . . [IRS] if such practice is subject to Federal regulation under section 330 of title 31, United States Code" – in other words, someone who is regulated under Circular 230. Second, "tax advice" means "advice given by an individual with respect to a matter which is within the scope of the individual's authority to practice described" in the first definition.

Violations

This article only briefly describes the potential consequences for confirmed willful violations of sections 10.23 or 10.20(a). Readers interested in further details can find them elsewhere – notably, in the circular, at sections 10.50, "Sanctions," 10.52, "Violations subject to sanction," and in Subpart D, *Rules Applicable to Disciplinary Proceedings*. Other resources include

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[11] Pub. L. No. 105-206, 112 Stat. 685, section 3411(a) (Jul. 22, 1998).

[12] The legislative history to the enactment of section 7525 is insightful as to why Congress created the privilege. See, in particular, the Sente Finance Committee's report:

> A common law privilege of confidentiality exists for communications between an attorney and client with respect to the legal advice the attorney gives the client. . . . . The privilege . . . does not apply where an attorney that is licensed to practice another profession is performing such other profession. For example, if a taxpayer retains an attorney who is also . . . a certified public accountant (CPA), the taxpayer may not assert the attorney-client privilege . . . [for] communications made and documents prepared by the attorney in his role as a CPA.
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> . . . .
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> No equivalent privilege is provided for communications between taxpayers and other professionals authorized to practice before the Internal Revenue Service, such as *accountants or enrolled agents*.
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> The provision extends the present law attorney-client privilege of confidentiality to tax advice that is furnished to a client-taxpayer (or potential client-taxpayer) by any individual who is authorized under Federal law to practice before the IRS[,] . . . [which] include attorneys, certified public accountants, enrolled agents and enrolled actuaries.

S.R. Rep. No. 105-174, 105th Cong., 2d Sess., at 69-71 (Apr. 22, 1998) (emphasis added).

Question 16 of the OPR FAQs on irs.gov and OPR Alert 2026-13, Understanding OPR's Investigative and Disciplinary Processes: What Tax Professionals Need to Know .

In short, depending on the number of violations and the facts and circumstances surrounding them, outcomes are generally a letter of reprimand, which is private, and prescribed in the practice regulations as an alternative to the other option of a disciplinary sanction. Sanctions that can be imposed are censure (which is public); suspension from practice; disbarment; monetary penalties, which apply at the individual practitioner level as well as to a firm or other entity under certain conditions; and disqualification of appraisers.

Conclusion

As with other occupational fields, in the tax-practice profession, certain events or occurrences – such as unforeseeable delays, extension requests, priorities that later must be reprioritized, and underestimations of how time-consuming a task will be -are inescapable.

A competent and dedicated practitioner can successfully manage them. If not already clear, the central point of this article is that these everyday realities are not the cause of the problem and its inherent risks of harm to taxpayers, federal tax administration, and practitioners (to their reputations, livelihoods, and good standing with the IRS). Rather, the problem lies in an indifferent or dismissive attitude, culminating in conduct that demonstrates a knowing disregard of Circular 230's obligations. Thereby exposing the practitioner to liability for breaching those obligations. We urge practitioners not to head down that path.

If you have questions about this article, please contact the OPR by phone at 202-317-6897 or eFax at 855-814-1722.