



# IRS Nationwide Tax Forum | 2023

## Circular 230 and Ethics in Tax Practice: How You Can Stay Out of Trouble

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## Presenter Introduction and Presentation



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(OPR)

# Today's presentation will:

- Explain the structure and organization of the Office of Professional Responsibility and its role in regulating tax practitioners through the enforcement of Treasury Circular 230.
- Describe Circular 230's definition of who is a practitioner,
- Identify critical practice standards and your obligations to your clients and the IRS,
- Cite to key requirements of Circular 230, including due diligence, competence, and establishment of procedures to ensure compliance; and
- Recognize best practices regarding recordkeeping and data security.

# Office of Professional Responsibility (OPR)

- Administers the laws and regulations governing the practice of representatives before the IRS;
- Interprets and applies the standards of practice in Circular 230 for tax professionals in a fair and equitable manner;
- Investigates allegations of misconduct by practitioners in their practice before the IRS and imposes disciplinary sanctions if warranted; and
- Supports the Service's strategy of enhancing enforcement of the Internal Revenue Code (IRC) by ensuring tax practitioners adhere to professional standards and follow the law.

# Statutory Authority

- 31 USC §330 (1884) authorizes:
  - The regulation of the practice of representatives of persons before the Department of the Treasury, including the IRS, and determinations of practitioner "fitness" to practice. (31 USC §330(a)).
  - Types of disciplinary action, including monetary penalties. (31 USC §330(c)).
  - The regulation of certain appraisers. (31 USC §330(d)).
  - Setting standards for certain written advice. (31 USC §330(e)).

# OPR Jurisdiction

OPR's jurisdiction extends to those who practice before the IRS.



**“Practice” is defined as all matters connected with a presentation to the IRS or any of its officers or employees relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by the IRS. Includes:**

Preparing and filing documents

Corresponding and communicating with the IRS

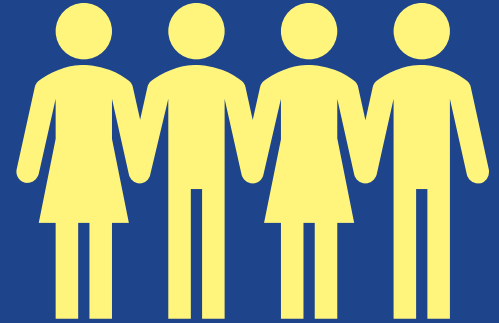
Rendering written advice

Representing a client at conferences, hearings, meetings

Not *mere* tax return preparation

# OPR Regulates

- The regulated community is principally:
  - Attorneys
  - Certified Public Accountants (CPA)
  - Enrolled Agents, Enrolled Retirement Plan Agents, Enrolled Actuaries
  - Annual Filing Season Program (AFSP) Record of Completion Holders
  - Appraisers who submit appraisals supporting tax positions



# What is Fitness to Practice?

- Fitness to Practice
  - Good character
  - Good reputation
  - Necessary qualifications to provide valuable service to the client
  - Competency to advise and assist persons in presenting their cases





# Return Preparer Office (RPO)

- Provides comprehensive oversight and support of tax professionals to improve taxpayer compliance.
- Oversees preparer tax identification numbers (PTINs), enrollment programs, IRS approved continuing education providers.
- Administers the Annual Filing Season Program (AFSP) for tax return preparers.

# Treasury Circular No. 230

- Circular 230 is the document containing the statute and regulations detailing a tax professional's duties and obligations while practicing before the IRS

Treasury Department  
Circular No. 230  
(Rev. 6-2014)

Catalog Number 16586R  
[www.irs.gov](http://www.irs.gov)

Regulations Governing Practice before  
the Internal Revenue Service

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Department  
of the  
Treasury

Title 31 Code of Federal Regulations,  
Subtitle A, Part 10,  
published (June 12, 2014)

Internal  
Revenue  
Service



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# Circular 230 – “The Biggies”

## §10.35 Competence

- A practitioner must have the knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.
  - Must know when you are not competent
- Can provide competent representation by researching and educating oneself on the issue or consulting with another tax professional who has established competence in the field.

## §10.22 Diligence as to Accuracy

- A practitioner must exercise due diligence –
  - In preparing or assisting in the preparation of, approving, and filing tax returns, documents, affidavits, and other papers relating to IRS matters;
  - In determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury; and
  - In determining the correctness of oral or written representations made by the practitioner to clients regarding any matter administered by the IRS.

## §10.34(a) Standards for Tax Returns

- A practitioner may not sign a tax return or advise a position on a tax return willfully, recklessly, or through gross incompetence that:
  - Lacks reasonable basis
  - Is an unreasonable position (§6694(a)(2))
  - Is a willful attempt to understate liability
  - Is a reckless, intentional disregard of rules and regulations
- Patterns matter!

# §10.34(b) Standards for Documents and Other Papers

- May not advise taking frivolous positions
- May not advise submissions:
  - To delay or impede tax administration;
    - Conversely, a practitioner must not interfere with any lawful IRS attempt to obtain information unless, in good faith, the practitioner reasonably believes the information is privileged. (§10.20)
  - That are frivolous;
  - Containing or omitting information that demonstrates an intentional disregard of rules or regulations.

# §10.34(c) Standards and Advising Clients on Penalties

- Must advise a client of potential penalty exposure regarding:
  - A position taken on the return if the practitioner advised the client regarding the position OR the practitioner prepared or signed the return
  - Any document, affidavit or other paper submitted to the IRS
- Must also advise the client of penalty avoidance through disclosure



## §10.33 Best Practices

- Tax advisors should provide clients with the highest quality representation concerning Federal tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the Internal Revenue Service.
  - Get to know your client
  - Engagement agreements
  - Historical tax information
  - Confirm books and records, and substantiation



## §10.33 Best Practices (Contd.)

- To ensure you comply with the standards of practice under Circular 230 and to avoid a referral to OPR, adhere to best practices in practicing before the IRS.
  - Contemporaneously document questions and taxpayer responses.
  - Think "substantial authority" or "reasonable basis" with disclosure (i.e., Form 8275).
  - Duty re: Client's Error/Omission (§10.21)
- Don't take unnecessary risks--loss of livelihood and damage to reputation and integrity is not worth it.



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# Other Key Circular 230 Provisions

## §10.21 Knowledge of Client's Error/Omission

- If a practitioner knows a client has not complied with US revenue laws or made an error in, or omission from, any return, affidavit, or other document the client submitted or executed under US revenue laws, the practitioner has a duty to:
  - Promptly inform the client of noncompliance, error, or omission, and
  - Advise the client regarding the consequences under the Code and regulations of that noncompliance, error, or omission.

## §10.29 Conflicting Interests

- Circular 230 prohibits conflicts of interest.
- A conflict of interest exists if:
  - One client's interest is directly adverse to another
  - There is a significant risk of material limitation of responsibilities to—
    - Another client or former client,
    - A third-person, OR
    - Personal interests of the practitioner

## §10.29 Conflicting Interests (Contd.)

- A practitioner may represent if:
  - The practitioner has a reasonable belief in their ability to provide competent, diligent representation to each affected client;
  - The representation is not legally prohibited; and
  - Each affected client waives conflict by giving *informed consent* in writing *at the time* the conflict is known (i.e., within 30 days).
    - The practitioner must retain the written waivers for 36 months after representation ceases and provide them available to the IRS upon request.

## §10.20 Duty to Provide Information

- Upon a proper and lawful request for records or information from IRS, the duty to promptly submit requested information unless, in good faith, you reasonably believe information sought is privileged.
- If the requested information is not in your or your client's possession, you must promptly inform the IRS and provide any information regarding who has possession of the requested information.

# §10.36 Procedures to Ensure Compliance

- Under section 10.36, Procedures to Ensure Compliance, of Circular 230, a firm with a Circular 230 practice must have in place "adequate procedures" for compliance by its members, associates, or employees with Circular 230.
- This extends to ensuring technological competence by tax practitioners and support staff.





# §10.36 Procedures to Ensure Compliance: Technology & Cybersecurity

- Assess Risks
  - Security protocols in electronic system
    - Server locks
    - Guidance on phishing / malware schemes
    - Laptop and mobile security
  - Develop email delivery procedures that comply with federal and state laws
  - Conduct a computer network survey to determine potential security issues (e.g., antivirus software, firewalls, security patches, scan engines)
  - Social and professional networking sites

# §10.36 Procedures to Ensure Compliance: Technology & Cybersecurity (Contd.)

- Security Protocols
  - Don't collect more client "Personally Identifiable Information" (PII) than is necessary for business
  - Don't retain PII longer than necessary or legally required for business purposes
  - Protect PII collected, used, disclosed and retained (e.g., locked room or file cabinets, put files away at COB)
  - Restrict access to PII only to individuals who have a business need to access such information
  - Dispose of PII appropriately (e.g., on-site shredding, wiping old hard drives)
  - Instill awareness and train employees on proper handling of PII
  - Have policies and procedures in place regarding what to do in case of data breach

# §10.36 Procedures to Ensure Compliance

- A “responsible practitioner(s)” at a firm is subject to discipline if, through willfulness, recklessness, or gross incompetence, they:
  - Fail to take reasonable steps to ensure adequate procedures for compliance with Circular 230 are in place and properly followed, or
  - Individuals who are firm members, associates, or employees are or were engaged in a pattern or practice of failing to comply with Circular 230.
- Even if the responsible practitioner takes reasonable steps, they may be liable for violations if they:
  - Know or should know that one or more members, associates, or employees are or were engaged in a pattern or practice of not complying with Circular 230, and
  - Fail to take prompt action to correct the noncompliance.

# §10.51(a)(4) Giving False or Misleading Information

- No participation in any way in giving of false or misleading information to the Department of Treasury or any officer/employee thereof. Includes:
  - Testimony
  - Tax returns
  - Financial statements
  - Applications
  - Affidavits, declarations, and any other document or statement (written or oral)

# §10.51(a)(6) Willful Noncompliance by Practitioner

- Willfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax.
  - When a referral is made to OPR, *the practitioner's tax compliance is always checked.*

# § 10.51(a)(7) Willful Assistance with Violation of Federal Tax Laws

- Willfully assisting, counseling, encouraging, or suggesting to a client/prospective client:
  - An illegal plan to evade Federal taxes or payment thereof
  - Violation of any Federal tax law
- Willfully assisting, counseling, encouraging, or suggesting to a client/prospective client:
  - An illegal plan to evade Federal taxes or payment thereof
  - Violation of any Federal tax law

# §10.51(a) Disreputable Conduct

- Disreputable conduct includes:
  - Conviction of any criminal offense under Federal tax laws (§10.51(a)(1))
  - Conviction of any criminal offense involving dishonest or breach of trust (§10.51(a)(2))
  - Conviction of any felony under Federal or State law where the conduct involved renders the practitioner unfit to practice (§10.51(a)(3))
  - Disbarment or suspension from practice as an attorney or CPA (§10.51(a)(10), §10.82(b)(1))
  - Conviction of any crime under Title 26, any crime involving dishonesty or breach of trust, or any felony that renders the practitioner unfit to practice (§10.82(b)(2))



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# Investigative and Disciplinary Process



# OPR Referrals

- The OPR acts on referrals from various sources, including reports forwarded to the office by IRS field personnel.
- The OPR also receives complaints and information from state licensing authorities, other government agencies, tax practitioners, and the general public.
- The suspected misconduct reported to the OPR often involves due diligence issues, preparer penalty assessments, incompetence, erroneous representations, and bad advice.

# Circular 230 Sanctions

- Circular 230
  - Authorizes specific sanctions for violations of the duties and obligations
  - Describes the procedures that apply to administrative proceedings for discipline

# OPR Complaint Process

- Jurisdiction
- Investigation
  - Evaluate evidence received
  - Database searches
  - Interview referent/complainant and other witnesses
- Pre-Allegation or Allegation Letter
  - Written notice to the practitioner
  - Before or soon after the investigation begins
  - Outlines allegations (information received/developed, Circular 230 implications), with the opportunity to respond

# Sanctions and Discipline

- Soft Letter (private)
- Letter of Reprimand (private)
- Censure
- Suspension
- Disbarment
- Disqualification (appraisers)
- Monetary Penalty

# Disciplined Practitioner List

Where to Search for Disciplined Tax Professionals

<https://www.irs.gov/tax-professionals/search-for-disciplined-tax-professionals>



OPR's disciplinary look-up contains searchable information regarding censures of practitioners for Circular 230 misconduct and suspensions and disbarments of individuals from practice before the IRS.



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# Contact Information & Resources

# Contact & Referrals to OPR

- Office of Professional Responsibility  
1111 Constitution Ave., NW  
SE:OPR Rm. 7238  
Washington, DC 20224  
Efax: (855) 814-1722
- Visit <http://www.irs.gov/> and search "Circular 230 Tax Professionals"
- Referrals
  - To make a referral regarding a return preparer, use Form 14157.
  - For practitioners covered under Circular 230, you can send a fax to OPR's eFax.

# Resources

- Publications & Forms
  - Treasury Department Circular No. 230 (Rev. 6-2014)
  - Pub. 947, *Practice Before the IRS and Power of Attorney*
  - Form 2848, *Power of Attorney and Declaration of Representative*
  - Form 8275, *Disclosure Statement*
  - Form 8867, *Paid Preparer's Due Diligence Checklist*
  - *Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases*
  - *Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service*
- OPR Website
  - Sign up for OPR Alerts



# Resources available in Spanish

- Circular 230 del Departamento del Tesoro (Rev. 6-2014), *Reglamentos que rigen el ejercicio ante el Servicio de Impuestos Internos*
- Formulario 2848, *Poder Legal y Declaracion del Representante y Instrucciones para el Formulario 2848(SP)*
- Pub. 947, *Como Ejercer ante el Servicio de Impuestos Internos (IRS) y el Poder Legal*
- Formulario 8821, *Autorización para recibir Información Tributaria y Instrucciones para el Formulario 8821*