

**SECTION: CIRCULAR 230  
PROPOSED REVISIONS TO CIRCULAR 230 TO ESTABLISH REGISTERED  
RETURN PREPARERS, MANDATE FOR OVERSIGHT BY CHIEF TAX  
PRACTITIONER IN FIRM AND PENALTY FOR FAILING TO ELECTRONIC  
FILE MANDATED RETURNS**

Citation: NPRM REG-138637-7, 8/23/10

The IRS has issued revised proposed regulations under Circular 230 to accomplish a number of goals. First, the regulations revise the proposed return signing standards under §10.34 to bring them into line with revisions to IRC §6694. Second, the changes would broaden Circular 230 to cover the new category of “registered tax return preparer” that is being created under the IRS preparing licensing project and restrict preparation of tax returns for compensation to those covered by Circular 230, which will be expanded to include registered tax return preparers. Third, the IRS puts some teeth into the mandatory electronic filing of §6011(e), defining a failure to electronically file a tax return when required to do so as disreputable conduct under §10.51 for which a preparer may be disciplined by the Office of Professional Responsibility under Circular 230.

Revised §10.3 contains the definition of a registered return preparer (at §10.3(f)(1)) and limits the practice of those individuals to the preparation of returns and representing taxpayers in an examination if the registered tax return preparer signed the return, interacting with revenue agents, customer service representatives and the like. However such individuals will not be able to represent taxpayers before appeals officers, revenue officers, Counsel or employees with similar duties at the IRS.

Such a person may preparer or assist in preparing all or a substantial portion of a tax return for which the preparer has passed the requisite examination. Initially the IRS proposes to issue two exams, one covering non-business 1040s and the other covering Form 1040 and business returns. A registered return preparer passing the latter exam will be eligible to prepare or assist in preparing all returns, while a registered return preparer passing only the first exam will be limited to preparing such non-business 1040 returns.

Proposed §10.4(c) provides the requirements to be designated as a registered return preparer.

Under Proposed §10.6(e)(3) registered tax return preparers will be required to obtain 15 hours of continuing professional education, including 2 hours of ethics, 3 hours of federal tax law updates and 10 hours of other federal tax topics. Standards that such continuing education courses must meet are also defined in §10.6.

Proposed §10.8 clarifies that the preparation of a tax return is practice before the IRS, subject to the requirements of Circular 230 and can only be done for compensation by someone who is authorized under Circular 230 (generally a CPA, EA, attorney or registered tax return preparer).

Proposed §10.30 prohibits registered tax return preparers from using the word “certified” or using a designation that suggests they are in an employee/employer relationship with the IRS. The IRS suggests an acceptable description that a registered tax return preparer may use is “designated as a registered tax return preparer with the Internal Revenue Service.”

Proposed §10.34 is revised to come more closely into compliance with the standards found in IRC §6694. A practitioner may not sign a return that the practitioner knows, or reasonably should know, contains a position that lacks a reasonable basis, is a willful attempt to understate the tax liability of the taxpayer or is treated as an unreasonable position under §6694(a)(2). The latter category would expand the coverage to include positions lacking substantial authority which are not disclosed and positions related to tax shelters for which it is not reasonable to assume the position would more likely than not be sustained on its merits. Similar standards apply to advice the preparer may give a taxpayer.

For purposes of this rule the practitioner must be shown to have acted willfully, recklessly or through gross incompetence. The preamble to the regulations notes that this will apply less often than the penalty under §6694 would, since the IRC penalty does not require a showing that the preparer acted willfully, recklessly or through gross incompetence for the penalty to apply.

Proposed §10.36 which previously dealt only with procedures in the firm to assure compliance with the covered opinion rules of §10.35 is greatly expanded in scope. The new provision requires practitioners with principal authority for overseeing a firm's tax practice to insure the firm has in place adequate procedures to insure the all employees comply with the requirements of Circular 230. Such practitioners will be subject to OPR discipline if either he/she does not take reasonable steps to insure compliance and one or more members of the firm violates Circular 230 or the individual, upon becoming aware that an individual in the firm is violating Circular 230 does not take prompt action to correct the noncompliance. The latter category will include violations which the practitioner with principal authority should have known took place, even if the IRS can't show actual knowledge of the violation.

Proposed §10.51 will expand the list of items that are deemed to be disreputable conduct in practice to include willfully failing to file a return electronically that is required to be filed electronically unless the failure is due to reasonable cause. Some had noted that the new electronic filing requirement of §6011 for 2011 did not have a penalty clause—the IRS, noting the same, has now decided to use Circular 230 to provide the “big stick” to insure preparers electronically file returns as mandated by law.

As well, anyone preparing a return who does not possess a valid PTIN will also be deemed to have violated Circular 230.

As many of these regulations are necessary for the IRS to implement the preparer licensing program, we can expect final regulations before we begin filing 2010 tax returns.

## **SECTION: 6109**

### **IRS ISSUES FINAL REGULATIONS ON PREPARER REGISTRATION, NO CPA FIRM PARAPROFESSIONAL OR CANDIDATE EXCEPTION**

Citation: Reg §1.6109-2, TD 9501, 9/28/10

The IRS final regulations to implement the preparer registration and regulation provisions were adopted in a virtually unchanged form from that found in the proposed regulations. Specifically, the IRS chose not to exempt from the registration provisions individuals working under the supervision of a signing registered preparer. That will include paraprofessionals and CPA candidates working in CPA firms. While noting that the IRS had received a number of comments asking for such an exemption, the IRS concluded that exempting this large class of non-signing preparers would not be consistent with the IRS's goal of having a record of those preparing returns for compensation and assuring that all such individuals had undergone a background check and demonstrated at least a minimum level of competence.

The immediate effect of this change is that all such non-CPA, non-EA members of firms will need to register with the IRS prior to December 31, 2010 to obtain a PTIN and pass the basic tax compliance background checks conducted prior to the issuance of a number. In the future such individuals will also need to pass the IRS exam to demonstrate competence.

**SECTION: 6109****IRS OPENS UP REGISTRATION WEBSITE FOR RENEWAL OF AND APPLYING FOR NEW PTINS**

Citation: IRS News Release IR-2010-099, 9/28/10

The IRS has begun taking registrations for 2011 PTINs on the IRS's new PTIN site. Everyone who will be preparing returns next year is required to visit the site to either obtain a PTIN or renew their current PTIN, and this step must be completed before January 1. After January 1, a PTIN registered under the new system will be required before any individual can prepare a 2011 income tax return.

The application requires a practitioner to set up a new account with the IRS—the older eServices accounts will not work with this step. Once an account is setup online, an individual is sent a temporary password to log into the site, being required to immediately select a permanent password.

For online registration a preparer will need to have access to his/her tax return for the prior year, as well as information on the individual's licensing with the appropriate entity. The IRS indicates that once a person has completed the process the new (or renewed) PTIN will be immediately available.

If an individual doesn't wish to apply online, a Form W-12 can be filed with the IRS. The IRS notes that a paper application will take 4-6 weeks to process.

The fee for a PTIN, payable at the time of the application, will be \$64.25 for the upcoming filing season beginning in January 2011. Annual renewal of the PTIN, along with payment of the fee, will be required.

**SECTION: 6213****OFFSET OF REFUND AGAINST PROPOSED DEFICIENCY DURING 90 DAY PERIOD TO FILE TAX COURT PETITION ALLOWED**

Citation: Perry v. Commissioner, TC Memo 2010-219, 10/7/10

The taxpayer was upset that the IRS offset his refund from his 2007 return against a deficiency the IRS claimed existed on his 2002 return. The IRS made this assessment during the 90 day period during which the taxpayer could file a petition in Tax Court regarding the 2002 deficiency, and the taxpayer claimed that was in violation of the prohibition on levy under §6213(a) during the period when the taxpayer can file the petition.

The Tax Court noted that §6402(a) expressly allows the IRS to credit an overpayment against any liability. However the taxpayer argued that while §6213(a) did not explicitly address offsets, offsetting an overpayment against the proposed liability went against the “underlying fundamental principle” of the statute. However the Tax Court did not agree, finding the offset was a mere bookkeeping entry and was not either a levy nor an action in court, the two items prohibited by §6213(a).

## **SECTION: 7502**

### **TAXPAYER ALLOWED TO INTRODUCE EVIDENCE FOR TIMELY MAILING FOR ENVELOPE DESTROYED BY USPS**

Citation: Van Brunt v. Commissioner, TC Memo 2010-220, 10/7/10

The envelope the taxpayer mailed their Tax Court petition in was severely damaged by the US Postal Service. In fact, the only part of the envelope that was still attached and legible was the return address—the mailing label to the Tax Court was gone entirely, as was the original postmark. The USPS returned the envelope to the taxpayer for “a better address”—or, perhaps more properly, a useable address of any sort.

Unfortunately the taxpayer’s attorney had left the original document with a UPS store on the final day for filing the petition. When the document was returned the taxpayer’s representative mailed the petition in a new envelope along with the damaged envelope and an appropriate explanation. The IRS claimed that the petition was filed late and therefore the Tax Court had no jurisdiction.

The Tax Court found that the taxpayer was allowed to introduce evidence of timely filing. The Court found the testimony of the taxpayer’s attorney to be credible that he had placed the envelope with the UPS store on the day in question with the envelope properly address. In addition, the Court found the testimony of the employee of the UPS store that the envelope was entered in the log and taken to the post office on the day in question to also be credible.

Thus, the Tax Court found the envelope was postmarked on the final day for filing the petition and thus, under §7502, is treated as having been timely filed.