

CIRCULAR 230

BACKGROUND & DEVELOPMENTS

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TREASURY & PRACTICE

- Authorization to Practice
 - 5 USC §500(b) – Member in good standing of the bar (range of federal agencies)
 - 5 USC §500(c) – Certified Public Accountant in any state (IRS only)
- Treasury Authority to Regulate Practice
 - 31 USC §330
 - §31 USC §330(a)(1) – Treasury requirements
 - §31 USC §330(a)(2) – Treasury authority to
 - Disbar
 - Suspend
 - Impose Monetary Sanctions

CIRCULAR 230

- Regulations – 31 CFR 10
- Office of Professional Responsibility (OPR)
 - Established in 2003
 - Successor to prior Office of the Director of Practice
- Today's Session to Look at Revisions to Circular 230 under the OPR
- Federal Title 26 Requirements That Impact Tax Practice
 - §6694 Preparer Penalties
 - §7216 Disclosure & Use of Tax Return Information
 - §7701

STANDARDS OF AUTHORITY

	§6694	Old 10.34	New §10.34
More likely than not	Tax Shelter		Tax Shelter
Substantial authority	Nondisclosed		Nondisclosed
Realistic possibility		Nondisclosed	
Reasonable basis	Disclosed		Disclosed
Not frivolous		Disclosed	

CIRCULAR 230

- Controversy Issues (POA filing)
- Tax Advice
 - 2005 Changes
 - 2007 Clarification
- Tax Preparation
 - 2011 Expansion

CIRCULAR 230

- Attorneys
 - CPAs
 - Enrolled Agents
 - Registered Tax Return Preparers
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CIRCULAR 230 KEY PROVISIONS

- §10.20 Information to be furnished
 - Promptly furnish
 - Privilege exception
 - §10.22 Diligence as to Accuracy
 - §10.24 Assistance to/from Disbarred/Suspended Practitioner
 - §10.29 Conflicting Interests
 - §10.33 Best Practices (“Aspirational”)
 - §10.35/§10.37 Tax Advice
 - §10.51 Incompetence/Disreputable Conduct
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JUNE 2005 CHANGES

- Tax Advice Revisions
- §10.35 – Covered Opinions
 - Flood of disclaimers
 - Relationship to §6662(d)(2)(C) and Reliance Opinions
- §10.36 Procedures to Insure Compliance (§10.35)
- §10.37 Requirements for Written Tax Advice

SEPTEMBER 2007

- Tighten Requirements
- §10.2 Definitions - §10.35 opinions are practice regardless of submission
- §10.22 Diligence as to Accuracy
- §10.27 Contingent Fees
- §10.29 Conflicting Interests (no oral consents/negative consents)

JUNE 2011 REVISIONS

- Final regulations at TD 9527
- Released June 3, 2011
- Effective August 2, 2011

BASIC AREAS COVERED

- Implement the Preparer Registration Program
- Bring Circular 230 Signing Standards into Line with IRC §6694
- Increase Responsibility (Exposure) of Person in Charge of Tax Practice
- Enforcement System for E-filing Mandate

REGULATION OF TAX PROFESSIONALS

- Office of Professional Responsibility
 - Enrolled agents
 - CPAs
 - Attorneys
 - Enrolled actuaries
 - Separate Return Preparer Office
 - Administer PTIN applications
 - Competency testing
 - Continuing Education
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REVISED §10.2

- Clarifies that practice include
 - Preparing a document
 - Filing a document
- Tax Return Preparer – meaning identical to
 - IRC §7701(a)(36)
 - Reg. §301.7701-15

REVISED §10.3

- Definition of a Registered Return Preparer at §10.3(f)(1)
 - Practice limited to
 - Preparation of returns
 - Exams where preparer signed return
 - Cannot represent taxpayers before
 - Appeals officers
 - Revenue officers
 - Counsel
 - Similar employees

REGISTERED RETURN PREPARER

- Prepare or assist in preparing return for which taxpayer has passed the exam
- Exams to be developed
 - Form 1040 Exam
 - Limited to preparing non-business 1040 returns
 - Form 1040 and Business Returns Exam
 - Can preparer other returns
- No Exam Out Yet
 - Under Notice 2011-6 until we have an exam
 - Must get PTIN
 - Cannot use term “Registered Return Preparer”

REVISED §10.4

- Name remains “Registered Return Preparer”
 - Objections from AICPA and NAEA
 - Did get a separate “Surgeon General’s” disclaimer Notice
 - Notice 2011-45, plans to revise Circular 230
 - Must be contained in advertising referencing being a “registered return preparer”
 - “The IRS does not endorse any particular individual tax return preparer. For more information on tax return preparers go to IRS.gov.”
- §7525 privilege does not apply to registered return preparers
- Registered return preparers subject to the standards of Circular 230

REVISED §10.4

- Exemption for certain individuals
 - Notice 2011-6
 - Special rules for individuals who prepare and work
 - Under supervision of an attorney, certified public accountant or attorney
 - In organization more than 50% owned by one of the above
 - Such individuals cannot sign a return
 - Must notify IRS if no longer eligible

REVISED §10.5

- Sets procedures to become a registered return preparers
- IRS may conduct
 - Tax compliance
 - Filed all individual and business tax returns
 - Failed to pay or make arrangements to pay Federal tax debts
 - Suitability check
 - Engaged in conduct that would justify suspension or disbarment
 - Engaged in disreputable conduct

REVISED 10.6

- Renewal of registered return preparer
 - Must renew each year
 - Continuing education – 15 hours
 - 3 hours of Federal tax law updates
 - 2 hours of tax related ethics
 - 10 hours of other Federal tax topics
 - Law firm, CPA firm, EA firm exempt preparers also exempt from CPE requirements
 - Unpaid interns do not need a PTIN—but paid interns will need them (as well as potentially needing to be a registered return preparer)

REVISED §10.9

- Continuing Education Providers for EAs and Registered Return Preparers
 - Organization sponsoring it must obtain continuing education program number for each program
 - Organizations described in §10.6(f) of regulations exempted
 - No preapproval of programs at this time

REVISED §10.8

- PTIN Requirement
 - Prepare or assists with preparation
 - All or substantially all of a tax return or refund claim
 - Only issued to
 - Attorney
 - CPA
 - EA
 - Registered Tax Return Preparer
 - Notice 2011-6 Exempt Individuals
 - Looks to Reg. §301.7701-15(f) for solely clerical assistance exemption

REVISED 10.30

- Registered Return Preparers can use the term “designated as a registered tax return preparer by the Internal Revenue Service”
- Notice 2011-45 requirement for additional disclaimer, IRS to issue proposed regulations to change Circular 230 to incorporate this requirement

REVISED §10.20

- Remove §10.20(b) investigations of practitioner by OPR
- Added §10.20(a)(3) same topic, but now references “a duly authorized officer or employee of the Internal Revenue Service”
- Change added in final regulations—was not in the proposed regulations

REVISED 10.34

- Standards With Respect to Tax Returns and Documents, Affidavits and Other Papers
 - Adopted §6694 standard levels
 - Cannot sign return or claim for refund if knows or reasonably should know
 - lacks a reasonable basis;
 - is an unreasonable position as described in section 6694(a)(2)
 - is a willful attempt by the practitioner to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the practitioner as described in section 6694(b)(2)
 - Same rules for advising a client of a return position

REVISED 10.34

- Standards With Respect to Tax Returns and Documents, Affidavits and Other Papers
 - Trigger to Apply Penalty
 - Differs from §6694 (so not automatically in violation of Circular 230 if penalized under §6694)
 - Conduct must be willful, reckless or grossly incompetent
 - Lack of required disclosure on a return is a violation of this provision
 - Justified by arguing violating the IRC is an unethical act (a continuing refrain in the explanation of the regulations)

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REVISED 10.36

- Penalties on Individual in Charge of Tax Practice for Sins of Others in the Organization
 - Greatly expanded in these rules
 - Previously limited to violation of §10.35
 - Now covers any violation of Circular 230
 - Person in Charge Must Insure
 - Procedures in place to ensure the firm's practitioners comply with Circular
 - Must take action if becomes aware of violation of Circular 230 by a person with the firm
- Significant ratcheting up of pressure on firms to develop quality control standards and designate individual in charge of the same

REVISED §10.51

- Disreputable Conduct
 - Added failure to file returns electronically when required to do so by §6011(e)(3)
 - Puts teeth in provision that did not have any placed in it by Congress
 - “The IRS cannot permit tax return preparers to intentionally disregard the internal revenue laws and continue to practice before the IRS.”
 - Not having a PTIN When Required
 - Gives IRS right to act even if person did not get the number
 - More importantly, would be able to invoke §10.36 against person in charge of tax practice