

Requirements for Enrolled Agents

Introduction

- ▶ All of this section comes from Circular 230
- ▶ To quote the IRS regarding Circular 230:
- ▶ “Circular 230 is the common name given to the body of regulations promulgated under the enabling statute found at Title 31, United States Code § 330. This statute and the body of regulations are the source of the OPR’s authority. Circular 230 defines “practice” and who may practice before the IRS; describes a tax professional’s duties and obligations while practicing before the IRS; authorizes specific sanctions for violations of the duties and obligations; and, describes the procedures that apply to administrative proceedings for discipline.”

Information to be Furnished to the IRS

Furnishing Information

Section 10.20 of Circular 230

- ▶ “A practitioner must, on a proper and lawful request by a duly authorized officer or employee of the Internal Revenue Service, promptly submit records or information in any matter before the Internal Revenue Service unless the practitioner believes in good faith and on reasonable grounds that the records or information are privileged.”
 - ▶ Much of the time, the information will not be privileged

Furnishing Information

nts (2) Where the requested records or information are not in the possession of, or subject to the control of, the practitioner or the practitioner's client, the practitioner must promptly notify the requesting Internal Revenue Service officer or employee and the practitioner must provide any information that the practitioner has regarding the identity of any person who the practitioner believes may have possession or control of the requested records or information. The practitioner must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the practitioner is not required to make inquiry of any other person or independently verify any information provided by the practitioner's client regarding the identity of such persons.

(3) When a proper and lawful request is made by a duly authorized officer or employee of the Internal Revenue Service, concerning an inquiry into an alleged violation of the regulations in this part, a practitioner must provide any information the practitioner has concerning the alleged violation and testify regarding this information in any proceeding instituted under this part, unless the practitioner believes in good faith and on reasonable grounds that the information is privileged.

Furnishing Information

In addition, practitioners cannot interfere with attempts by the IRS to get records.

Omissions

Omissions and Errors

Per Circular 230, 10.21:

A practitioner who, having been retained by a client with respect to a matter administered by the Internal Revenue Service, knows that the client has not complied with the revenue laws of the United States or has made an error in or omission from any return, document, affidavit, or other paper which the client submitted or executed under the revenue laws of the United States, must advise the client promptly of the fact of noncompliance, error, or omission.

The practitioner must advise the client of the consequences as provided under the Code and regulations of such noncompliance, error, or omission.

Omissions and Errors

Notes on that requirement:

- ▶ We are not required to “turn in” the client
- ▶ We cannot force the client to amend their tax return
- ▶ It does not matter if the error or omission is because of disregard for the rules, or a simple “oops” type of error
- ▶ It does not matter if it was our error, their error, or someone else’s error - our job is to inform the client about the error, tell them about the consequences of the error, and advise them on what the fix is.

Disbarred Persons

Help from Disbarred Persons

§ 10.24 Assistance from or to disbarred or suspended persons and former Internal Revenue Service employees.

A practitioner may not, knowingly and directly or indirectly:

(a) Accept assistance from or assist any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter or matters constituting practice before the Internal Revenue Service.

(b) Accept assistance from any former government employee where the provisions of § 10.25 or any Federal law would be violated.

What is 10.25?
See next slide

Former IRS Employees

- ▶ Essentially, 10.25 of Circular 230 says former government employees are restricted in representing taxpayers in some matters
- ▶ Think: conflicts of interest; situations where the employee may have been involved in the development of a rule, and so forth

Advertising, Solicitation, Fees

Jason Dinesen, Enrolled Agent, LPA

Advertising, Solicitation, Fees

10.30(a):

“A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim.”

Also cannot:

- ▶ Use the term “certified”
- ▶ Cannot imply an employer/employee relationship with the IRS

Can say:

- ▶ “Enrolled to represent taxpayers before the Internal Revenue Service,”
- ▶ “Enrolled to practice before the Internal Revenue Service,” and
- ▶ “Admitted to practice before the Internal Revenue Service.”

Solicitation

- ▶ A practitioner may not make, directly or indirectly, an uninvited written or oral solicitation if it violates any federal or state law

Fees

Things to know about what Circular 230 says regarding fees:

- ▶ EAs can (but are not required to) publish fee information
- ▶ If they do publish fee information, that the published rates for at least 30 days after the date of publication

Rules Regarding Fees

Fees

More about fees:

- ▶ Fees cannot be "unconscionable" (this term is not defined)
- ▶ Contingency fees are generally not allowed
 - ▶ A contingency fee is a fee based on a percentage of an amount, such as a percentage of a refund

Contingent Fees

(2) A practitioner may charge a contingent fee for services rendered in connection with the Service's examination of, or challenge to —

(i) An original tax return; or

(ii) An amended return or claim for refund or credit where the amended return or claim for refund or credit was filed within 120 days of the taxpayer receiving a written notice of the examination of, or a written challenge to the original tax return.

(3) A practitioner may charge a contingent fee for services rendered in connection with a claim for credit or refund filed solely in connection with the determination of statutory interest or penalties assessed by the Internal Revenue Service.

(4) A practitioner may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code.

Due Diligence

Diligence as to Accuracy

Section 10.22 - “Diligence as to accuracy”

- ▶ Applies not just to tax returns but to anything a practitioner files or provides to the IRS
- ▶ When relying on the work product of others, a practitioner can rely on that work if the practitioner used “reasonable care in engaging, supervising, training and evaluating the person.”

Due Diligence Standards for Tax Returns

10.34(a)

May not sign a tax return or advise a position on a tax return, if it:

- Lacks a 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

When examining this, the IRS looks at patterns. This is more than just a one-time human error, the IRS is concerned with a pattern of problems.

Conflict of Interest

10.29 Conflict of Interest

Conflicts of interest can arise between couples, partners, shareholders, members of LLCs, employees of a client business, etc.

- ▶ Don't let the term "conflict" confuse you, it does NOT necessarily mean that people are not getting along (it "might" but isn't really what 10.29 is getting at)
- ▶ A conflict of interest means: you representing one taxpayer would be harmful to another taxpayer
 - ▶ For example, working with both ex's in a divorce
- ▶ Circular 230 DOES NOT say you can't work with both sides, when there's a conflict of interest
 - ▶ But you must get a written release from both parties
- ▶ This comes up more often than you might think.

Refund Checks

10.31 Taxpayer Checks

10.31(a): A practitioner may not endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the practitioner or any firm or other entity with whom the practitioner is associated) issued to a client by the government in respect of a Federal tax liability.

- No cashing
- No endorsing
- No depositing to a controlled account
- No split electronic transfers
- Client concurrence is irrelevant

Written Advice, Etc.

Written Advice

We have already touched on Circular 230

(2) The practitioner must—

(i) Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);

(ii) Reasonably consider all relevant facts and circumstances that the practitioner knows or reasonably should know;

(iii) Use reasonable efforts to identify and ascertain the facts relevant to written advice on each Federal tax matter;

(iv) Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable;

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Written Advice

(v) Relate applicable law and authorities to facts; and

(vi) Not, in evaluating a Federal tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

(3) Reliance on representations, statements, findings, or agreements is unreasonable if the practitioner knows or reasonably should know that one or more representations or assumptions on which any representation is based are incorrect, incomplete, or inconsistent.

Written Advice

- ▶ Circular 230 then contains an interlude about relying on the advice or work-product of other professionals
- ▶ You can, UNLESS:
 - ▶ (1) The practitioner knows or reasonably should know that the opinion of the other person should not be relied on;
 - ▶ (2) The practitioner knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or
 - ▶ (3) The practitioner knows or reasonably should know that the other person has a conflict of interest in violation of the rules described in this part.

Written Advice

(c) Standard of review.

(1) In evaluating whether a practitioner giving written advice concerning one or more Federal tax matters complied with the requirements of this section, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all facts and circumstances, including, but not limited to, the scope of the engagement and the type and specificity of the advice sought by the client.

(2) In the case of an opinion the practitioner knows or has reason to know will be used or referred to by a person other than the practitioner (or a person who is a member of, associated with, or employed by the practitioner's firm) in promoting, marketing, or recommending to one or more taxpayers a partnership or other entity, investment plan or arrangement a significant purpose of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code, the Commissioner, or delegate, will apply a reasonable practitioner standard, considering all

facts and circumstances, with emphasis given to the additional risk caused by the practitioner's lack of knowledge of the taxpayer's particular circumstances, when determining whether a practitioner has failed to comply with this section.

Continuing Education

Jason Dinesen, Enrolled Agent, LPA

Continuing Education

Enrolled Agents are required to receive the following continuing education (CPE) hours:

- ▶ 72 hours in their 3-year enrollment cycle (we talk about enrollment cycles next)
- ▶ A minimum of 16 hours of CPE a year
- ▶ Each year, a minimum of 2 hours of ethics CPE must be taken

Enrollment Cycles

Enrollment Cycles

- ▶ EA enrollment is on a 3-year cycle, i.e. an EA renews every 3 years
- ▶ The enrollment cycle an EA is on depends on the last digit of the EA's Social Security number
- ▶ Renewal is done between November 1 and January 31
- ▶ Form 8554 - can be done on paper but also online

IMPORTANT:

- ▶ Preparer Tax Identification Numbers (PTIN) must be renewed **every year**
 - ▶ More on PTINs shortly

Prompt Disposition

Prompt Disposition of Matters

This is 10.23 of Circular 230, and is pretty straightforward:

“A practitioner may not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.”

Return of a Client's Records

Return of Records

10.28 of Circular 230

- ▶ A practitioner must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her Federal tax obligations.
- ▶ The practitioner may retain copies of the records returned to a client.
- ▶ The existence of a dispute over fees generally does not relieve the practitioner of his or her responsibility under this section. Nevertheless, if applicable state law allows or permits the retention of a client's records by a practitioner in the case of a dispute over fees for services rendered, the practitioner need only return those records that must be attached to the taxpayer's return.
 - ▶ The practitioner, however, must provide the client with reasonable access to review and copy any additional records of the client retained by the practitioner under state law that are necessary for the client to comply with his or her Federal tax obligations.

Return of Records

- ▶ Could also include internal/practitioner-prepared items (such as workpapers or calculations) if those items are required for the client to meet their federal tax obligations

PTIN Requirements

Jason Dinesen, Enrolled Agent, LPA

PTINs

- ▶ PTIN = Preparer Tax Identification Number
- ▶ The PTIN requirement is found in Section 10.8 of Circular 230 and Regulation 1.6109-2.
- ▶ Per Circular 230: Any individual who prepares “all or substantially all of a tax return or claim for refund must have a preparer tax identification number.”
- ▶ Regulation 1.6109-2 adds the phrase “*compensated for preparing* all or substantially all”
- ▶ Enrolled Agents must have a PTIN, even if they don’t prepare tax returns

Who Needs a PTIN?

- ▶ EAs need a PTIN even if they don't prepare tax returns
- ▶ Attorneys and CPAs don't need a PTIN if they don't prepare tax returns
- ▶ A PTIN is an individual number; you cannot share a number or have an "office" number
- ▶ A PTIN is different from an EFIN (we cover EFINs in another module in Part 3)
- ▶ An employee preparing their employer's tax return (such as an office manager) does not need a PTIN

Jason Dinesen, Enrolled Agent, LPA

PTIN Scenarios

- ▶ A bookkeeper in your office keeps the Quickbooks file for a client, which you use to prepare the tax return for the client. The bookkeeper is NOT considered a preparer and does not need a PTIN.
- ▶ You hire interns or administrative staff to do data entry into your software. They do NOT need a PTIN.
- ▶ Variation: the interns or administrative staff sometimes meet with clients and prepare simple tax returns. You review and sign the returns as the paid preparer. **They DO need a PTIN.**
- ▶ What if your interns or assistants call clients to followup on missing information? **They do NOT need a PTIN.**

PTIN Scenarios

- ▶ You are retired and no longer have a tax practice, but you sometimes prepare returns at the local VITA clinic. You do NOT need a PTIN.
- ▶ You use software that walks the preparer through a series of questions in preparing the return. You hire employees who sit with clients and the employees use the software questions to prepare the return. The answer to the PTIN question here is, “it depends.”

Supervisory Responsibilities

Jason Dinesen, Enrolled Agent, LPA

Supervisory Responsibilities

Supervisory Responsibilities. If you have or share principal authority and responsibility for overseeing your firm's tax practice, you must take reasonable steps to ensure that your firm has adequate procedures in place to raise awareness and to promote compliance with Circular 230 by your firm's members, associates, and employees and that all such employees are complying with the regulations governing practice before the IRS. *Treasury Circular No. 230 §10.36.*