

2024



IRS Nationwide
TaxForum



Circular 230 & the Lifecycle of a Practitioner Practicing before the IRS



IRS Nationwide
2024 Tax Forum



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(OPR)

Today our seminar will help you:

- Recognize the roles of statutory and regulatory authorities in governing tax practice;
- Understand the foundational provisions in Treasury Circular No. 230 – best practices, competence, due diligence, standards for tax returns and other documents;
- Appreciate the key practices that should be put in place to ensure compliance; and
- Recognize disreputable conduct that could result in OPR sanctions.





Statutory and Regulatory Authorities



Statutory Authority

- 31 USC § 330 (1884) authorizes OPR to:
 - Regulate 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)).
 - Impose disciplinary action, including monetary penalties. (31 USC § 330(c)).
 - Regulate certain appraisers. (31 USC § 330(d)).
 - Set standards for certain written advice. (31 USC § 330(e)).



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





Treasury Circular No. 230

- 31 CFR Subtitle A, Part 10 (commonly called "Circular 230")
 - Originally published in 1921; latest revision 6/9/14
- Contains 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

Regulations Governing Practice before
the Internal Revenue Service

Department
of the
Treasury

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

Internal
Revenue
Service

Treasury Circular No. 230 (Cont.)

- Circular 230 Section 10.1(a)(1) provides that the OPR shall generally have responsibility for matters related to practitioner conduct and shall have exclusive responsibility for discipline, including disciplinary proceedings and sanctions.
- Circular 230 authorizes specific sanctions for violations of the specified duties and obligations, as well as describes the procedures that apply to administrative proceedings for discipline.



Office of Professional Responsibility

- Administers the laws and regulations governing practice of tax professionals before the IRS
- Oversees practice standards, including applying Circular 230 standards fairly and equitably, investigating misconduct, and imposing disciplinary sanctions if warranted
- Supports the Service's goal of enhancing enforcement of the Internal Revenue Code by ensuring tax practitioners adhere to professional standards and follow the law



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

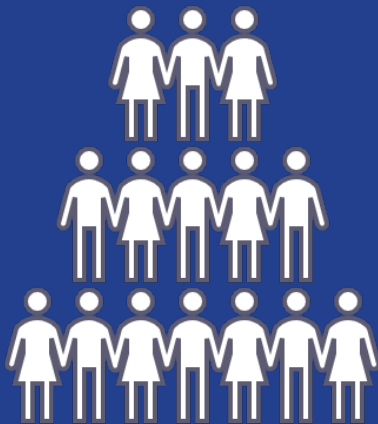
Representing a client at conferences, hearings, meetings

Does not include mere tax return preparation





Regulated Community



- The regulated community consists principally of:
 - Attorneys
 - CPAs
 - Enrolled agents, enrolled retirement plan agents, enrolled actuaries
 - Annual Filing Season Program Record of Completion Holders
 - Appraisers who are assessed an IRS appraiser-related penalty



Foundational Provisions of Circular 230



§ 10.33 Best Practices

- Circular 230 sets forth the expectation that practitioners will provide clients with the highest quality representation by adhering to "best practices" in providing advice on Federal tax issues and preparing or assisting in the preparation of a submission to the IRS.
- §10.33 Best Practices are “aspirational” in effect.
 - Nevertheless, tax professionals are expected to observe best practices to preserve public confidence in the tax system.

§ 10.33 Best Practices (Cont.)

- Best practices:
 - Clearly communicate with your client on engagement terms;
 - Establish the relevant facts, evaluate the reasonableness of any assumptions or representations, relate applicable law to relevant facts, and reach a conclusion supported by the law and the facts;
 - Advise clients regarding the import of conclusions reached; and
 - Act fairly and with integrity in practice before the IRS.



§ 10.35 Competence

- A practitioner must have the knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged. Requires:
 - Practitioners must know when they're not competent on a tax matter(s)
 - Practitioners may become competent by researching the relevant law or by consulting with another tax professional who has established competence in the field
 - Practitioners must not fail to recognize or comply with ethical responsibilities (e.g., conflicts of interest, reasonable belief, etc.)



§ 10.22 Diligence as to Accuracy

- A practitioner must exercise due diligence in –
 - Preparing and assisting in the preparation of and approving and filing tax returns, documents, affidavits, and other papers relating to IRS matters;
 - Determining the correctness of oral and written representations made by the practitioner to the Department of the Treasury (including the IRS); and
 - Exercising good faith in ascertaining the correctness of oral or written representations made to the practitioner by clients regarding any matter administered by the IRS.



§ 10.22 Diligence as to Accuracy (Cont.)

- In relying on information furnished by clients (§ 10.34(d)), a practitioner generally:
 - May rely in good faith without verification upon information furnished by the client.
 - Cannot ignore the implications of information furnished to or actually known by the practitioner.
 - Must make reasonable inquiries if the information furnished appears incorrect, incomplete, or inconsistent with other facts or assumptions.

Willful blindness violates a practitioner's due diligence responsibilities under Circular 230.





§ 10.22 Diligence as to Accuracy (Cont.)

- Reliance on another professional's work (§10.34(d)):
 - Practitioners may rely on the work of other professionals unless there is reason to question it.
 - **No willful blindness!**
 - Under the safe harbor provision in §10.22, practitioners are deemed to have exercised reasonable due diligence if they used reasonable care in selecting, engaging, supervising, training, overseeing, and evaluating the individual's work they are relying on.
 - **Reasonable care is based on facts and circumstances of the situation.**



§ 10.34(a) Standards for Signing and Advising on Tax Returns

- Practitioners may not (1) willfully, recklessly, or through gross incompetence sign a tax return or refund claim or (2) advise on a position on a tax return or refund claim, that:
 - Lacks a reasonable basis;
 - Is an unreasonable position;
 - Is a willful attempt to understate a tax liability; or
 - Is reckless or an intentional disregard of rules and regulations

Think "substantial authority" or "reasonable basis" with disclosure (Form 8275, *Disclosure Statement*).



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

- Practitioners may not advise clients to:
 - Take a position on a document or other paper filed with the IRS unless the position is not frivolous
 - 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)
 - Submit a document or other paper to the IRS:
 - The purpose of which is to delay or impede the administration of federal tax laws;
 - That is frivolous; or
 - That contains or omits information in a manner that demonstrates an intentional disregard of rules/regulations, unless the practitioner also advises the client to submit a document that evidences a good faith challenge to the rule/regulation

Patterns matter!



§ 10.34(c) Standards and Advising Clients on Penalties

- Practitioners must advise clients 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 client of penalty *avoidance* through disclosure



Key Practices to Ensure Compliance

§ 10.36 Procedures to Ensure Compliance

- Under §10.36, *Procedures to Ensure Compliance*, a firm with a Circular 230 practice must have in place "adequate procedures" for compliance by its members, associates, or employees with Circular 230.



§ 10.36 Procedures to Ensure Compliance

(Cont.)

- 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.



§ 10.29 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 (Cont.)

- 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 to the IRS upon request.



§ 10.21 Knowledge of Client's Error/Omission

- If a practitioner knows a client has not complied with U.S. revenue laws or made an error in, or omission from, any return, affidavit, or other document the client submitted or executed under U.S. 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.



§ 10.20 Duty to Provide Information

- Upon a proper and lawful request for records or information from the IRS, the duty to promptly submit requested information unless, in good faith, you reasonably believe the 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.





Disreputable Conduct

§ 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 dishonesty or breach of trust (§ 10.51(a)(2)).
 - Conviction of any felony under federal or state law for which 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) and § 10.82(b)(1)).
 - Conviction of any crime under U.S. Code Title 26, any crime involving dishonesty or breach of trust, or any felony for which the conduct involved renders the practitioner unfit to practice (§ 10.82(b)(2)).





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

- Practitioners cannot participate in any way in the giving of false or misleading information to the Department of Treasury (including the IRS) or any officer or employee thereof, including:
 - Testimony
 - Tax returns
 - Financial statements
 - Applications
 - Affidavits, declarations, and any other document or statement (written or oral)

§ 10.51(a)(6) Practitioner Willful Tax Noncompliance

- Practitioners cannot willfully fail to file a federal tax return in violation of federal tax laws, or willfully evade, attempt to evade, or participate 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 checked.**



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

- Practitioners cannot:
 - Willfully assist, counsel, or encourage a client/prospective client in violating, or suggest to a client/prospective client to violate any federal tax law; or
 - Knowingly suggest to a client/prospective client an illegal plan to evade federal taxes or payment thereof





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, *Return Preparer Complaint*.
 - For practitioners covered under Circular 230, you can send a fax to OPR's eFax (see above).





Resources and Guidance

- Treasury Department Circular No. 230 (Rev. 6-2014)
- Form 2848, *Power of Attorney and Declaration of Representative*
- Form 8275, *Disclosure Statement*
- Form 8867, *Paid Preparer's Due Diligence Checklist*
- Publication 947, *Practice Before the IRS and Power of Attorney*
- Publication 4557, *Safeguarding Taxpayer Data: A Guide for Your Business*
- OPR Website
- News & Updates from the Office of Professional Responsibility
- Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases
- Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service

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*





Did you know...

We need your help this week!

Please visit the SB/SE Research **Focus Group** table to sign up to share your thoughts. All focus groups are held during lunch, so you won't miss CPE!

- Online Tools
- Reasonable Cause Penalty Relief
- Digital Asset Compliance
- Written Information Security Plans
- High Income IRA Examinations
- Heavy Highway Vehicle Use Tax

Space is limited so sign up today!

The IRS does research about what **YOU, the tax professional, needs.**

Last year, IRS completed the inaugural ***Needs and Engagement Survey of Tax Professionals*** (NEST Survey).

This fall we will *randomly select* a sample of tax professionals to take the NEST Survey. Look for a mail or phone invitation from our vendor, ICF Macro, who administers the survey.