

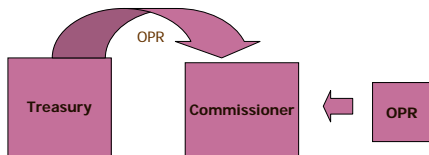
THE OFFICE OF PROFESSIONAL RESPONSIBILITY

Standard Bearer for
Integrity in Tax Practice

AUTHORITY AND DELEGATION

AUTHORIZED UNDER TITLE 31 NOT TITLE 26.

DELEGATED → TO THE COMMISSIONER, IRS.



The Statute

- 31 U.S.C. §330 (1884)
- regulates the practice of representatives of persons before the Department of the Treasury



"Ticket" to Practice

- good character
- good reputation
- necessary qualifications to enable the representative to provide valuable service to the client
- competency to advise and assist persons in presenting their cases



The Regulations

- 31 C.F.R. Part 10 (cir. 1886)
- Treasury Circular No. 230 (cir. 1921 Pamphlet) – Four subparts:
 - Authority to Practice
 - Duties and Restrictions Relating to Practice
 - Sanctions for Violations
 - Disciplinary Procedures



Circular 230

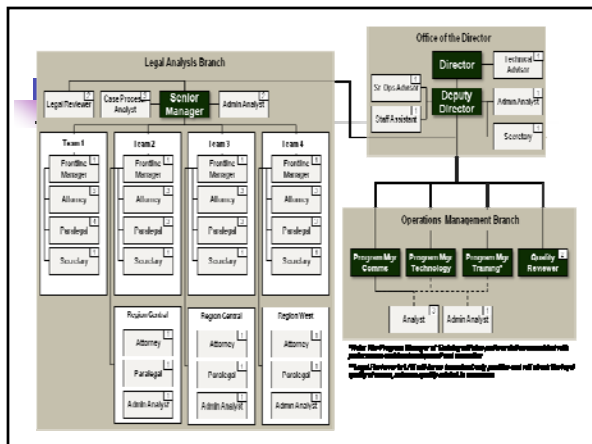
- **Where can I find it?** Online at <http://www.irs.gov/pub/irs-pdf/pcir230.pdf>
- Substantial revisions as of June 3, 2011. Effective August 2, 2011
- Form 2848 attestation.
- Guidance for all administrative practice conduct.
- **Do I need one?** Yes.
- WHY?

"Practice"

- All matters connected with a presentation to the IRS relating to a taxpayer's rights, privileges, or liabilities under laws or regulations **administered by** the IRS
- preparing or filing documents, corresponding and communicating with the IRS, rendering written advice, and representing a client at conferences, hearings and meetings
- Legacy Cir 230 Practitioners: Practice = Tax Return Preparation

2011 – Cir. 230 Revisions

- Expansion of Jurisdiction
- Division of Labor
- RPO = Processing
- OPR
 - Practice Standards Oversight
 - Independent Investigations
 - Propose Discipline
 - Administrative Hearings & Appeals



Procedures to ensure compliance - §10.36

- New (b) Requirements for tax returns and other documents. Any practitioner who has (or practitioners who have or share) **principal authority and responsibility** for overseeing a firm's practice of preparing tax returns, claims for refunds, or other documents for submission to the Internal Revenue Service must take **reasonable steps** to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of **complying with Circular 230**. Any practitioner who has (or practitioners who have or share) this principal authority **will be subject to discipline for failing to comply** with the requirements of this paragraph if--

Procedures to ensure compliance (cont)

- (1) The practitioner through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with Circular 230; or
- (2) The practitioner knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, who does not comply with Circular 230, and the practitioner, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

OPR Discipline Process

- Sources of referrals:
 - IRS operating divisions and employees, other government agencies- CI, TIGTA, DoJ, FTC, SEC
- Evaluate Potential of a Violation of Circular 230
- Consider Alternative Discipline Options or Pre-allegation Letter



OPR Discipline Process (cont.)

- Investigation
 - Documentation
 - Database Searches
 - Witnesses – Identify and interview

- Dispute – due process
 - Conference Opportunity
 - Settlement Opportunity
 - Administrative Hearing
 - Appeal
 - Final Agency Decision – www.irs.gov



Final Agency Decisions

Internet- Search OPR

- Final Agency Decisions (FAD) rendered after September 26, 2007 are published (Administrative Law Judge Initial Decisions and Order and Appellate Authority Final Agency Decision) on the OPR webpage.

- A decision becomes the FAD at one of two points:
 - 1) After ALJ Initial Decision and Order and neither party files an appeal with the AA within 30 days; or,
 - 2) Immediately after the AA issues his or her decision in the case

- The practitioner may file a complaint against OPR and take issue with the FAD in Federal District Court but the FAD becomes public, and the Decisions are published on the webpage at that point.



DISCIPLINE OPTIONS

- Reprimand (Private)
- Censure
- Suspension
- Disbarment
- Monetary Sanction (Individuals and Firms)



Key Circular 230 Provisions

- Diligence as to Accuracy (10.22)
- Due Diligence Standards for Returns and Other Docs (10.34)
- Conflicting Interests-10.29



Diligence as to Accuracy (10.22)

- Must exercise Due Diligence in:
 - Preparing, approving and filing tax returns, documents, affidavits etc. relating to IRS matters.
 - Determining correctness of oral/written representations made to the client or to Treasury personnel.
- Reliance on Another's Work Product? With Reasonable Care.



Standards for Tax Returns Section 10.34(a)

- May not sign a tax return or advise a position on a tax return, willfully, recklessly, or through gross incompetence if:
 - Lacks reasonable basis
 - Unreasonable position (6694(a)(2))
 - Willful attempt to understate liability (6694(b)(2)(A))
 - Reckless, intentional disregard of rules and regulations (6694(b)(2)(B))
- Patterns matter

Standards for Documents and Other Papers- 10.34(b)

- May not advise taking Positions that are Frivolous.
- May not advise Submissions:
 - to delay or impede tax administration
 - that are frivolous
 - Containing or omitting information that demonstrates an intentional disregard of rules or regulations.

Penalties and Client Reliance- 10.34(c), (d)

- Must Advise Client of Potential Penalties and their Avoidance through Disclosure (10.34(c))
- Reliance on Client Information in good faith, without verification, is OK, but...
 - Cannot ignore implications of other information furnished
 - Cannot ignore actual knowledge
 - Must make reasonable inquiries for incorrect, inconsistent information (10.34(d))
- No Willful Blindness.
- No "Don't ask, don't tell".

Conflicting Interests-10.29

- One client interest directly adverse to another
- Significant risk of material limitation
 - By Responsibilities to
 - Another client,
 - Former client,
 - Third person
 - OR PERSONAL INTEREST OF THE PRACTITIONER

Conflicts (cont.)

- May represent if:
 - Reasonable belief in ability to provide competent, diligent representation to each affected client
 - Not legally prohibited
 - EACH affected client waives conflict, gives INFORMED consent – in writing at the time conflict is known

Complaints or Inquiries?

- Office of Professional Responsibility
1111 Constitution Ave. N.W.
SE:OPR Rm. 7238
Washington, D.C. 20224
- For more info on OPR, Circular 230 and Disciplined Practitioners visit:
<http://www.irs.gov/>
Select “Tax Professionals”
Then “Circular 230 Tax Pros”
