

Ensuring Ethical Practice before the IRS

A Guide to Practitioner Duties and Responsibilities under Circular 230

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What Gives OPR Its Authority

Statutory Authority

31 USC §330 (1884) gives the Treasury authority to:

- Regulate who can practice before the IRS
- Determine practitioner fitness to practice
- Impose disciplinary actions, including penalties
- Regulate certain appraisers
- Set standards for written tax advice



This is the foundation of Circular 230

Treasury Circular No. 230

Circular 230 sets the rules for practice before the IRS

- Subpart A – Rules governing practice (licensing, renewals, continuing education)
- Subpart B – Duties and restrictions relating to practice before the IRS
- Subpart C – Sanctions for violations of Circular 230
- Subpart D – Rules applicable to disciplinary proceedings (due process)
- ✓ All practitioners are expected to comply with Circular 230

**Treasury Department
Circular No. 230
(Rev. 6-2014)**

Catalog Number 16586R
www.irs.gov

**Regulations Governing Practice before
the Internal Revenue Service**

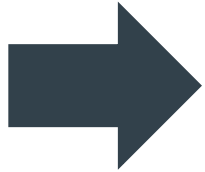
Department
of the
Treasury

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

**Internal
Revenue
Service**

What Does OPR Do

- Administers the laws and regulations for practice before the IRS
- Interprets and applies Circular 230
- Investigates allegations of practitioner misconduct
- Imposes disciplinary sanctions when warranted



OPR ensures practitioners meet professional and ethical standards

Fitness to Practice

To practice before the IRS, you must demonstrate:

- Good character
- Good reputation
- Necessary qualifications to provide valuable service to the client
- Competency to advise and assist persons in presenting their cases

What is “Practice” before the IRS

- Defined in Circular 230 §10.2(a)(4)
- Practice includes:
 - Representing clients (audit, collections, appeals)
 - Preparing documents submitted to the IRS
 - Advising clients on tax positions
 - Providing written tax advice
- What “Practice” does NOT include  mere tax return preparation

Who Are “Practitioners”?

- Attorneys
- CPAs
- Enrolled Agents, Enrolled Retirement Plan Agents, Enrolled Actuaries
- Annual Filing Season Program (AFSP) Record of Completion Holders
- Appraisers who submit appraisals supporting tax positions

The Non-Negotiables of Practice

§10.35 Competence

- Practitioners must have the knowledge, skill, thoroughness, and preparation necessary for the matter for which they have been engaged.
- Competence can be achieved by:
 - Researching and educating yourself, or
 - Consulting with another qualified tax professional
- Practitioners must maintain sufficient technological competence to:
 - Meet deadlines
 - Protect client confidentiality
 - Effectively communicate and represent taxpayers
 - Safeguard client information and property

§ 10.22 Diligence as to Accuracy

- A practitioner must exercise due diligence when –
 - Preparing and filing returns and documents
 - Making representations to the IRS
 - Advising clients on any matter administered by the IRS



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

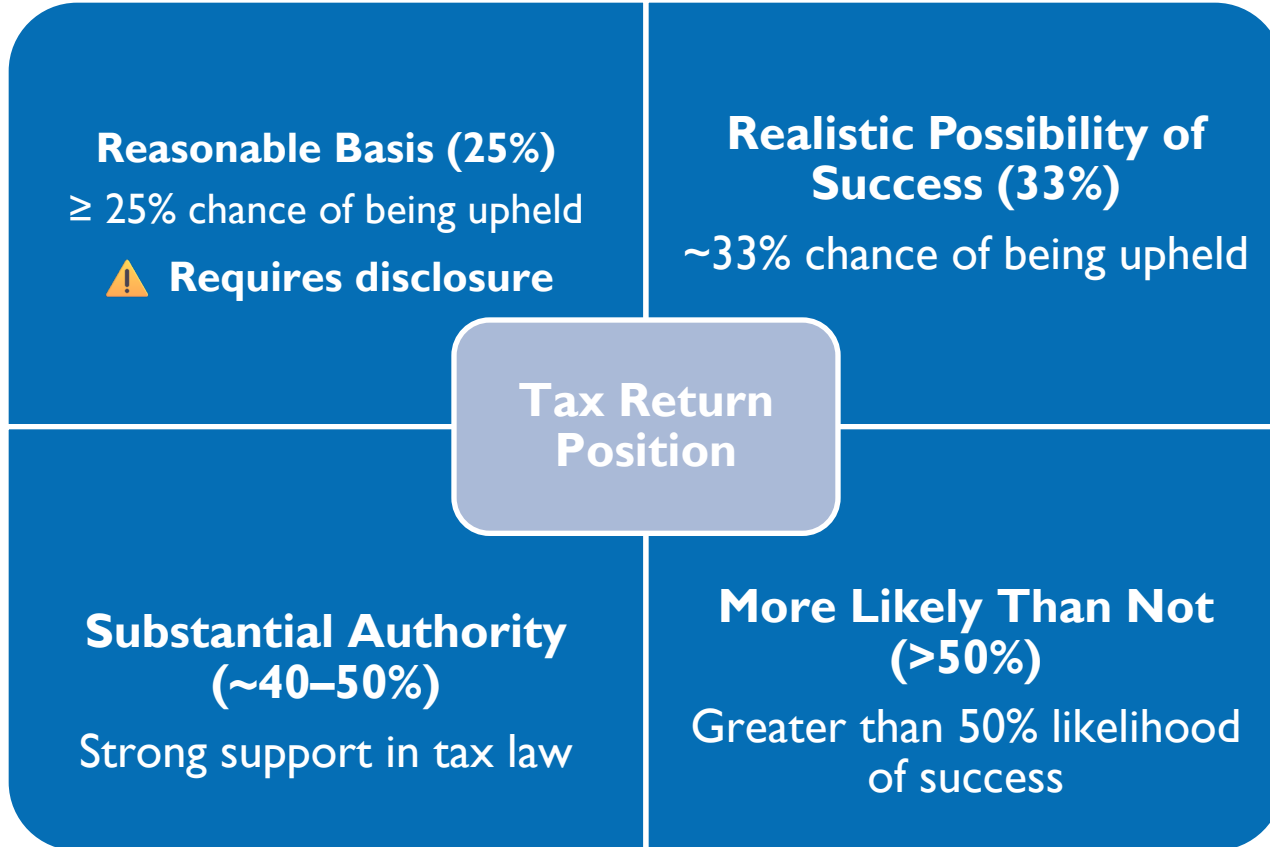
§10.22 Diligence as to Accuracy

- You may rely on client information - BUT:
 - May rely in good faith without verification
 - Cannot ignore obvious issues or inconsistencies
 - Must ask questions when information appears incorrect, incomplete, or inconsistent
- You may rely on another professional's work - BUT:
 - May rely unless you have reason to question it
 - No willful blindness!

§10.34(a) Standards for Tax Returns

- Do not sign or advise positions that are improper
- Violations include:
 - Positions that lack a reasonable basis
 - Unreasonable or unsupported positions
 - Willful understatement of tax liability
 - Reckless or intentional disregard of rules and regulations
- **Patterns matter! and can lead to discipline**

§ 10.34(a) Standards for Tax Returns



§10.34(b) Standards for Documents/Other Papers

- Practitioners may NOT:
 - Take frivolous positions
 - Submit items intended to:
 - Delay or impede tax administration
 - Advance frivolous arguments
 - Omit or misstate information to disregard rules or regulations

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

Practitioners MUST:

- Advise clients of potential penalties related to:
 - Positions 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
- Explain how to avoid penalties
 - Proper disclosure is key

Avoid These Common Pitfalls



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§10.21 Duty re: Client's Error/Omission

- If a practitioner knows a client has:
 - Not complied with US revenue laws
 - Made an error
 - Omitted information
- They MUST
 - Inform the client promptly
 - Advise them of the consequences

§10.29 Conflicting Interests

- A conflict exists when:
 - One client's interests directly adverse to another, or
 - Your representation is limited by:
 - Another client (or former client),
 - A third person
 - Your own personal interests

§10.29 Conflicting Interests

- You may represent a client ONLY if ALL are met:
 - You reasonably believe you can provide competent, diligent representation to each affected client;
 - Not legally prohibited; and
 - Informed written consent *from each affected client*
- Must retain consents for 36 months after representation ceases and make them available to the IRS upon request.

Business Practices Under Circular 230

§10.36 Procedures to Ensure Compliance

- Anyone who has or shares oversight responsibility, must:
 - Establish procedures to ensure compliance with Circular 230
 - Ensure all employees and associates follow those procedures
-  **If the firm does not address issues, OPR may take action**

§10.36 Procedures to Ensure Compliance

Anyone identified as having “principal authority” can be disciplined under Circular 230

- You may be subject to discipline if you:
 - Fail to establish or enforce compliance procedures
 - Ignore or overlook a pattern of noncompliance
 - Know (or should know) of issues and fail to act
-  Willfulness, recklessness, or gross incompetence

§10.27 Fees

- A practitioner may not charge an unconscionable fee in connection with any matter before the IRS.
 - Unreasonably excessive; grossly unfair
- Contingent fees are generally prohibited
 - Fees based in whole or in part on whether the position taken by the taxpayer is sustained by the IRS; and
 - Fee arrangement requiring reimbursement if a position is challenged by IRS or not ultimately sustained
- Violations often involve charging high fees for bad advice (e.g., raising arguments repeatedly rejected by the IRS and by case law)
- Allowed ONLY in limited situations:
 - IRS examination or challenge to an original return, amended return, or refund claim;
 - For services rendered in connection with the determination of statutory interest or penalties assessed by the IRS; or
 - For services in connection with any judiciary proceeding arising under the Code.

§10.28 Return of Client's Records

- You must return client records promptly
 - Return records the client needs to meet tax obligations
 - You may keep copies
 - You may not withhold records due to a fee dispute
- Client's records include:
 - What the client gave you
 - Documents or records from the client or third parties;
 - What relates to the engagement
 - Materials provided during the representation; and
 - What you prepared
 - Returns, claims for refund, schedules, affidavits, appraisals, or any other documents needed for compliance

§10.30 Solicitation

- What you can't do
 - Use false, fraudulent, or deceptive statements or claims
 - Misrepresent services in ads or outreach
- If you contact someone uninvited
 - Must clearly say it's a solicitation
 - Must identify how you got their information

§10.30 Solicitation

Practitioners

- May publish a fee schedule and disseminate this fee information to the public:
 - Fixed fees (for routine services)
 - Hourly rates
 - Fee ranges
 - Consultation fees
- Must
 - Disclose additional costs (e.g., phone charges, copy charges, filing fees, etc.),
 - Be clear if client is responsible for those costs
- Cannot
 - Charge more than advertised for at least 30 days after publishing

§10.31 Negotiation of Taxpayer Checks

- Practitioner CANNOT touch a client's refund
 - No directing refunds to accounts you control
 - No cashing, endorsing, or negotiating checks
 - No depositing into trust accounts
 - No splitting electronic transfers

! Important:

- Client permission does NOT matter
- Violations may result in penalties (IRC §6695(f))

Interacting with the IRS

§10.20 Duty to Provide Information

- Promptly provide requested information to the IRS
- Respond to proper and lawful requests

Exception: You may withhold information only if it is privileged (based on a good faith belief)

- If requested information is not in the practitioner's or client's possession
 - Promptly inform the IRS
 - Provide information on who does have it

§10.23 Prompt Disposition of Pending Matters

- A practitioner may not unreasonably delay any matters before the IRS

Personal Conduct Matters

§10.51(a) Disreputable Conduct

- Includes conduct such as:
 - 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 where conduct involved renders practitioner unfit to practice (§10.51(a)(3)).
 - Disbarment or suspension from practice as an attorney or CPA (§10.51(a)(10), §10.82(b)(1)).
 - Conviction of any crime under Title 26, any crime involving dishonesty or breach of trust, or any felony that renders the practitioner unfit to practice (§10.82(b)(2)).

§10.51(a)(4) Disreputable Conduct

- Practitioners may not provide or participate in providing false or misleading information to the IRS
- Applies to:
 - Testimony
 - Federal tax returns
 - Financial statements
 - Applications
 - Affidavits, declarations, and any other document or statement (written or oral)

§10.51(a)(6) Practitioner Willful Noncompliance

- Prohibited Conduct
 - Failing to make a Federal tax return in violation of the Federal tax laws,
 - Willfully evading, attempting to evade, or participating 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 always checked**

§10.51(a)(7) Willfully Assisting Noncompliance

- Practitioners may not:
 - Willfully assist, counsel, encourage, suggest to a client/prospective client to:
 - Evade federal taxes or payment of those taxes
 - Violate any federal tax law

Resources To Stay Compliant

Key Resources for Practitioners

Guidance

- Treasury Department Circular No. 230 (Rev. 6-2014)
- Publication 947, Practice Before the IRS and Power of Attorney (Rev. 2-2018)

Forms

- Form 2848, Power of Attorney and Declaration of Representative (Rev. 1-2021)
- Form 8275, Disclosure Statement (Rev. 10-2024)
- Form 8867, Paid Preparer's Due Diligence Checklist (Rev. 11-2024)

Key Resources for Practitioners

Websites and Tools

- OPR Website
- Subscribe to news and updates from the Office of Professional Responsibility
- Search IRS.gov for Disciplined Tax Professionals

Programs and Guidance

- Annual Filing Season Program (AFSP) (Rev. Proc. 2014-42)
- *Rights and Responsibilities of Practitioners in Circular 230 Disciplinary Cases*
- *Publication 6033, Guidance on Restrictions During Suspension or Disbarment from Practice Before the Internal Revenue Service*

Have Questions or Need to Submit a Referral?

- Internal Revenue Service
Office of Professional Responsibility
IR Room 7238
1111 Constitution Avenue NW
Washington, DC 20224
- eFax: (855) 814-1722
- Visit www.irs.gov and search "Circular 230 Tax Professionals" for additional resources and tools



Scan for OPR Resources

Thank You

