Study Unit One

Practice before the IRS

When a dispute or disagreement over tax issues arises, a taxpayer may have to appear before the IRS. Enrolled agents, CPAs, attorneys, and other individuals authorized to practice before the IRS may represent taxpayers. This study unit discusses the various individuals who may practice before the IRS, their standards of conduct, and other requirements of enrolled agents.

1.1 Authority to Practice

Rules of Practice

The rules governing practice before the Internal Revenue Service (IRS) appear in Treasury Department Circular 230, *Regulations Governing Practice before the Internal Revenue Service*.

- We have reproduced Circular 230 as Appendix A.

Practice before the IRS

Practice before the IRS is the presentation to the IRS, or any of its officers or employees, of any matter relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS.

Practicing before the IRS includes

- Communicating with the IRS for a taxpayer
- Representing a taxpayer at conferences, hearings, or meetings with the IRS
- Preparing necessary documents and filing them with the IRS for a taxpayer
- Rendering written advice with respect to any entity, transaction, plan, or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion

The following do **not** constitute practicing before the IRS:

- Preparing a tax return, an amended return, or a claim for refund
- Furnishing information upon request of the IRS
- Appearing as a witness for the taxpayer

Who may Practice

Only authorized persons may practice before the IRS (i.e., practitioners). The following persons may practice before the IRS:

- Attorneys
  - An attorney is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.
- Certified Public Accountants (CPAs)
  - A CPA who is not suspended from practice by the Office of Professional Responsibility and who is currently qualified to practice as a CPA in any state
- Enrolled agents
- Enrolled actuaries, for limited purposes listed under Sec. 10.3(d) of Circular 230
- Enrolled retirement plan agents, for limited purposes listed under Sec. 10.3(e) of Circular 230
- Annual Filing Season Program participants
  - The limited right to represent clients before the IRS is accorded to non-credentialed preparers only if they participate in the IRS Annual Filing Season Program (AFSP) and they must have prepared the return.
- Unenrolled individuals, if specifically permitted
- Appraisers

	TYPES OF PRACTITIONERS	**Attorney, CPA, EA**	**AFSP Participants/ Others Specifically Allowed to Practice**
	ALLOWED PRACTICE BEFORE THE IRS	Unlimited	Limited
Type of Practice before the IRS	PREPARATION OF RETURN OR CLAIM FOR REFUND	Sign returns and refunds when completed "all or substantially all" of a return or refund	Sign returns and refunds when completed "all or substantially all" of a return or refund
	REPRESENTATION	**1)** Before anyone at the IRS **2)** Examination and appeals **3)** Any return or refund	**1)** Before IRS revenue agents, customer service representatives, and employees **2)** During examination only **3)** Return that tax return preparer signed himself or herself for the period under examination **4)** Must participate in AFSP or be specifically permitted to practice
	TAX ADVICE	**Unlimited** including tax planning	**Limited** to return or refund preparation

Attorney or CPA Requirements to Practice

To practice before the IRS, an attorney or a CPA must

- File a written declaration, for each party (s)he represents, that (s)he
  - Is qualified currently
  - Has been authorized to represent the party
- Not be suspended or disbarred

Enrolled Agent

An enrolled agent is a person who has earned the privilege of representing taxpayers before the IRS by either (1) passing a three-part comprehensive IRS test covering individual and business tax returns or (2) through experience as a former IRS employee. Enrolled agent status is the highest credential the IRS awards. Individuals who obtain this credential must adhere to ethical standards and complete 72 hours of continuing education courses every 3 years.

Enrolled agents, like attorneys and CPAs, have unlimited practice rights. This means they are unrestricted as to which taxpayers they can represent, what types of tax matters they can handle, and which IRS offices they can represent clients before.

An enrolled agent may represent a particular party upon filing a written declaration that (s)he

- Is qualified currently and
- Has been authorized to represent the party.

Only natural persons may be enrolled agents.

- U.S. citizenship is not required.
- Enrollment is available to, but not required of, attorneys and CPAs. They are automatically entitled to practice before the IRS.

Eligibility to Become Enrolled

Eligible individuals must meet certain requirements for enrollment.

- **Conduct.** Enrollment is precluded by conduct that justifies suspension or disbarment from practice.
- **Exam.** A person who passes the IRS Special Enrollment Exam (also known as the Enrolled Agent or EA exam) may be enrolled.
- **IRS experience.** Past service in the IRS and technical experience are a basis for enrollment. Factors considered are
  - Length (minimum of 5 continuous years), scope, and extent of employment
  - Recommendation of the employing division's superior officer

Application to Become Enrolled

A properly executed application for enrollment is necessary.

- **Temporary recognition** to practice may be granted to an applicant in unusual circumstances. The application must be regular on its face and properly executed.
  - It does not constitute a finding of eligibility or enrollment.
  - It may be withdrawn at any time.
- Consideration of the application may be conditioned on both
  - Filing additional information and
  - Submitting to written or oral examination under oath.
- An applicant may file a written appeal within 30 days after the receipt of a notice of denial.
- Enrollment card. Each approved applicant is issued an enrollment card.

Eligibility of Non-Form 1040 Series Preparers to Represent Clients

Non-Form 1040 series preparers are individuals who certify that they do not prepare, or assist in the preparation of, any Form 1040 series tax return or claim for refund, except Form 1040-PR or Form 1040-SS, for compensation. Non-Form 1040 series preparers may

- Sign any tax return they prepare or assist in preparing
- Represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination if the individual signed the tax return or claim for refund for the taxable year under examination

Other Persons who may Practice before the IRS on a Limited Basis (aka "limited practice")

The IRS may authorize any person to represent another without enrollment. Individuals who are under suspension or disbarment from practice before the IRS may not engage in limited practice before the IRS. Listed below are situations in which representation by an individual without enrollment has been authorized:

- **Family.** An individual may represent, without compensation, an immediate family member.
- **Employee.** An employee may represent his or her regular, full-time employer.
- **Partnership.** A general partner or full-time partnership employee may represent the partnership.
- **Corporation.** An officer or a regular, full-time corporate employee may represent the corporation.
- **Fiduciary.** A trustee, a receiver, a guardian, an administrator, or an executor may represent the trust, receivership, guardianship, or estate.
- **Overseas.** An individual may provide representation to any individual or entity if the representation takes place outside the U.S.
- **Student Attorney/Student CPA.** A student can apply for permission to practice before the IRS by virtue of his or her status as a law student or CPA student under Sec. 10.7(d) of Circular 230.
- **Others.** An individual may be authorized by the Commissioner of the IRS to represent others in a particular matter.

Who Is Subject to Regulations in Circular 230

Any practitioner who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund is subject to the duties and restrictions relating to practice, as well as subject to the sanctions for violation of the regulations in Circular 230.

Who May Not Practice

Unauthorized persons may not practice before the IRS.

- A member of Congress may not practice before the IRS in connection with any matter for which (s)he directly or indirectly receives, agrees to receive, or seeks any compensation.
- An officer or employee of the U.S. (legislative, executive, or judicial branch) or its agencies may not practice before the IRS, except as
  - The representative of an immediate family member
  - A personal fiduciary, such as trustee, receiver, guardian, administrator, or executor, representing the fiduciary entity or beneficiary
- A state employee who investigates, passes upon, or otherwise deals with state tax matters may not practice before the IRS if (s)he may disclose information applicable to federal tax matters.
- An individual convicted of any offense involving dishonesty or breach of trust may not practice before the IRS.

Limited Practice

Any practitioner who is an unenrolled return preparer (i.e., AFSP participants and practitioners who are not CPAs, attorneys, or EAs) may only represent clients before revenue agents and customer service representatives (not appeals officers, revenue officers, or counsel) and may only represent clients for the tax return (s)he signed/prepared.

Oversight of Practice

The Commissioner of Internal Revenue or his or her delegate

- Acts on applications for enrollment
- Makes inquiries respecting matters under the commissioner's jurisdiction
- Institutes and provides for the conduct of disciplinary proceedings relating to practitioners
- Performs duties prescribed by the Secretary of the Treasury

PTIN

Any individual who for compensation prepares or assists with the preparation of all or substantially all of a federal tax return or claim for refund must have a Preparer Tax Identification Number (PTIN). A tax preparer can sign up for a PTIN online or by paper application, and it must be renewed annually.

1.2 Conduct of Practice

Rules for conduct of an attorney, a CPA, or an enrolled agent in practice before the IRS are provided in the applicable sections of Part 10 of Circular 230. Examples follow. Unless otherwise indicated, “practitioner” includes anyone preparing a tax return, e.g., an attorney, a CPA, or an EA.

Qualified

The person representing a taxpayer before the IRS must be qualified, e.g., an EA.

- The duty may not be delegated to an employee of the qualified practitioner.
- A power of attorney or written authorization from the taxpayer is insufficient.

Declaration

A written declaration that the representative is both qualified and authorized to represent the particular principal must be filed with the IRS.

Relying on Information Furnished by Clients

A practitioner advising a client to take a position on a tax return, document, affidavit, or other paper submitted to the IRS, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client.

- However, the preparer may not ignore the implications of the information.
- The preparer must make **reasonable inquiries** if the information appears inaccurate or incomplete.
- The preparer should make appropriate inquiries of the taxpayer about the existence of documentation for deductions.
- Tax return preparers use Form 8275, *Disclosure Statement*, to disclose items or positions that are not otherwise adequately disclosed on a tax return to avoid certain penalties.

Conflict of Interest

According to Sec. 10.29 of Circular 230, a conflict of interest exists if

- The representation of one client will adversely impact another client or
- There is a significant risk that the representation of one or more clients will be materially limited by the practitioner's responsibilities
  - To another client,
  - To a former client or a third person, or
  - By a personal interest of the practitioner.

A practitioner may represent conflicting interests before the IRS only if

- All directly affected parties provide informed, written consent at the time the existence of the conflict is known by the agent
  - Written consent must be within 30 days of informed consent.
- The representation is not prohibited by law
- The practitioner reasonably believes that (s)he can provide competent and diligent representation to each client

Copies of the written consents must be retained by the practitioner for at least 36 months from the date of the conclusion of the representation of the affected clients, and the written consents must be provided to any officer or employee of the IRS on request.

The following are additional rules for conflict of interest:

- A former government employee who participated in a transaction may not represent or knowingly assist any party who is or was a specific party to that transaction.
- A former IRS employee who participated in a matter administered by the IRS may not represent or assist anyone in the matter.
- No agent may knowingly accept direct or indirect assistance from a former government employee such that the conflict of interest exceptions above would be violated.
- Members of a former IRS employee's current firm, however, may represent or assist a specific party to such a matter if the former IRS employee is screened (isolated) such that (s)he does not assist in the representation.
- A practitioner may not administer oaths or certify papers as a notary public in connection with matters in which (s)he is employed as agent for the taxpayer or in which (s)he may be in any way interested before the IRS.

Diligence

Diligence must be exercised in preparing and in assisting in preparing, approving, and filing returns, documents, and other papers relating to IRS matters.

- Due diligence must also be exercised in determining the correctness of oral or written representations made by the practitioner to the Department of the Treasury and to clients.
- Diligence is presumed if the practitioner
  - Relies upon the work product of another person and
  - Uses reasonable care in engaging, supervising, training, and evaluating the person.
- If the practitioner engages a specialist, the focus is on engaging the specialist; when delegating to an employee, the focus is on training, supervising, and evaluating the employee.
- A practitioner may not unreasonably delay the prompt disposition of any matter before the IRS.

Information

Information or records properly and lawfully requested by a duly authorized officer or employee of the IRS must be promptly submitted.

- If reasonable basis exists for a good-faith belief that the information is privileged or that the request is not proper and lawful, the practitioner is excused from submitting the requested information.
- A practitioner also is required to provide information about the identity of persons that (s)he reasonably believes may have possession or control of the requested information if the practitioner does not.
  - This only requires that the practitioner make a reasonable inquiry of his or her client to determine this information and does not require independent verification of the client's statement.

Assistance from a Suspended or Disbarred Practitioner

A practitioner may not knowingly accept assistance (in practice before the IRS) from or give assistance to a person suspended or disbarred from practice before the IRS.

Negotiating Client Refunds

A practitioner must not negotiate, including by endorsement, any income tax refund check issued to a client.

Client Noncompliance

A practitioner who knows that a client has not complied with the revenue laws of the U.S. is required to promptly advise the client of noncompliance as well as the consequences of noncompliance under the Code and regulations.

- Circular 230 does not require the practitioner to notify the IRS or to advise the client to correct the error.

Fees

A practitioner may not charge an unconscionable fee in connection with any practice before the IRS.

- Published fees. If an agent publishes a fee schedule, (s)he must abide by it for the longer of a reasonable time or 30 days.
- A practitioner may not charge a **contingent fee** in relation to any matter before the IRS except
  - Examination of returns,
  - Claim for credit or refund (interest and penalties), and
  - Judicial proceedings.

Return of Client Records

A practitioner must return a client's records on request, regardless of any fee dispute.

- Records deemed returnable for purposes of this requirement are those records necessary for a client to comply with his or her federal tax obligations.
- However, returns or other documents prepared by the practitioner that the practitioner is withholding pending payment of a fee are not included.

Advertising

Circular 230 allows advertising and solicitation.

- An enrolled agent may use the phrases
  - "enrolled to practice before the Internal Revenue Service"
  - "enrolled to represent taxpayers before the Internal Revenue Service"
  - "admitted to practice before the Internal Revenue Service"
    - A temporarily recognized person may not use the phrase.
    - An applicant is granted temporary recognition pending approval of application.
- Enrolled agents may not indicate an employer-employee relationship with the IRS or use the term "certified" while describing their professional designation.
- False, fraudulent, misleading, deceptive, or coercive statements or claims are not allowed. Claims must be subject to factual verification.
  - A practitioner may advertise that practice is limited to certain areas, if true.
- Radio or television advertising must be recorded.
  - A recording of the audio transmission must be retained.
- Copies of communications must be retained by the practitioner for at least 36 months from the date of the last transmission or use.
- Uninvited solicitation, direct or indirect, of employment in matters related to the IRS is not allowed if the solicitation violates federal or state law or other applicable rule.
  - Mail solicitation designed for the general public is permissible.
  - Mail solicitation for non-tax return services based on specific tax return circumstances unique to the recipient is not permissible.
  - Making the availability of professional services known to other practitioners is allowed as long as the person or firm contacted is not a potential client.
- Fees. Each of the following may be advertised:
  - Fixed fees for specific routine services
  - A range of fees for particular services
  - The fee for an initial consultation
  - Hourly rates
  - Availability of a written fee schedule
- A practitioner may not assist or accept assistance from any person or entity that the practitioner knows has obtained clients in violation of Circular 230's advertising and solicitation rules.

1.3 Best Practices for Tax Advisors

Tax advisors should provide clients with the highest quality representation concerning tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the IRS.

Best practices include four general elements:

1. Performing the steps needed to support the facts for a tax filing:
   - Establish the facts, determine which facts are relevant, evaluate the reasonableness of any assumptions or representations, relate applicable law to the relevant facts, and arrive at a conclusion supported by the law and the facts.
2. Communicating clearly with the client about the terms of the engagement
3. Advising the client regarding the importance of the conclusions reached, including, for example, whether a taxpayer may avoid accuracy-related penalties under the Internal Revenue Code (IRC) if a taxpayer acts in reliance on the advice
4. Acting fairly and with integrity in practice before the IRS

Tax advisors must communicate the nature of any known errors or omissions, including any potential consequences under the Code or regulations.

Tax advisors with responsibility for overseeing a firm's practice of providing advice concerning federal tax issues or of preparing or assisting in the preparation of submissions to the IRS should take reasonable steps to ensure that the firm's procedures for all members, associates, and employees are consistent with the best practices.

If a representative is acting on behalf of an employer or any firm or other entity in connection with conduct subject to sanction, the Secretary of the Treasury may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct.

- Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.

1.4 Supervisor Responsibility

Procedures to Ensure Compliance with Circular 230

Any practitioner who has or shares principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds, or other documents for submission to the IRS 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 shares this principal authority will be subject to discipline for failing to comply in certain circumstances.

- The practitioner does not take reasonable steps to ensure that the firm has adequate procedures to comply with Circular 230, and one or more members, employees, or associates of the firm engage in a pattern or practice of noncompliance.
- The practitioner knows or should know of a pattern or practice of noncompliance, and the practitioner fails to take prompt corrective action.
- The practitioner is liable for such inaction if it is willful, reckless, or grossly incompetent.

Requirements for Written Tax Advice

A practitioner may give written advice (including by means of electronic communication) concerning one or more federal tax matters subject to the requirements below:

- When providing written advice about any federal tax matter, a practitioner must
  - Base the advice on reasonable assumptions,
  - Reasonably consider all relevant facts that are known or should be known, and
  - Use reasonable efforts to identify and determine the relevant facts.
- The advice cannot rely upon representations, statements, findings, or agreements that are unreasonable, i.e., are known to be incorrect, inconsistent, or incomplete.
- The advice must not consider the possibility that a tax return will not be audited or a matter will not be raised during the audit in evaluating a federal tax matter.
- When providing written advice, a practitioner may rely in good faith on the advice of another practitioner only if that advice is reasonable given all the facts and circumstances.
- The practitioner cannot rely on the advice of a person who the practitioner knows or should know is not competent to provide the advice or has an unresolved conflict of interest.

1.5 Sanctions and Disciplinary Proceedings

Any practitioner, e.g., an attorney, a CPA, or an EA, may be censured (given public reprimand), suspended, or disbarred from practice before the IRS for willful violations of any of the regulations contained in Circular 230.

Censure, Suspend, Disbar

The Secretary of the Treasury may censure, suspend, or disbar from practice before the IRS any practitioner, e.g., attorney, CPA, or enrolled agent, who

- Is shown to be incompetent or disreputable
- Refuses to comply with the rules and regulations relating to practice before the IRS
- Willfully and knowingly, with intent to defraud, deceives, misleads, or threatens any client

The following is a brief list of incompetence and disreputable conduct for which a practitioner may be sanctioned under Circular 230 Sec. 10.50 that includes, but is not limited to

- Conviction of any criminal offense under the federal tax laws.
- Conviction of any criminal offense involving dishonesty or breach of trust.
- Conviction of any felony under federal or state law for which the conduct involved renders the practitioner unfit to practice before the IRS.
- Giving false or misleading information, or participating in any way in the giving of false or misleading information to the Department of the Treasury or any office or employee thereof, or to any tribunal authorized to pass upon federal tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading.
- Solicitation of employment as prohibited under Sec. 10.30, the use of false or misleading representations with intent to deceive a client or prospective client in order to procure employment, or intimating that the practitioner is able improperly to obtain special consideration or action from the IRS or any officer or employee thereof.
- Willfully failing to make a federal tax return in violation of the federal tax law or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any federal tax.
- Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any federal tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade federal taxes or payment thereof.

- Misappropriation of, or failure properly or promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the United States.
- Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the IRS by the use of threats, false accusations, duress, or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, favor, or thing of value.
- Disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any state, territory, or possession of the United States, including a commonwealth, or the District of Columbia, any federal court of record or any federal agency, body, or board.
- Knowingly aiding and abetting another person to practice before the IRS during a period of suspension, disbarment, or ineligibility of such other person.
- Contemptuous conduct in connection with practice before the IRS, including the use of abusive language, making false accusations or statements, knowing them to be false, or circulating or publishing malicious or libelous matter.
- Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under the federal tax laws.
- Willfully failing to sign a tax return prepared by the practitioner when the practitioner’s signature is required by federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.
- Willfully disclosing or otherwise using a tax return or tax return information in a manner not authorized by the Internal Revenue Code, contrary to the order of a court of competent jurisdiction, or contrary to the order of an administrative law judge in a proceeding instituted under Sec. 10.60.
- Willfully failing to file, on magnetic or other electronic media, a tax return prepared by the practitioner when the practitioner is required to do so by the federal tax laws unless the failure is due to reasonable cause and not due to willful neglect.
- Willfully preparing all or substantially all of, or signing, a tax return or claim for refund when the practitioner does not possess a current or otherwise valid PTIN or other prescribed identifying number.
- Willfully representing a taxpayer before an officer or employee of the IRS unless the practitioner is authorized to do so pursuant to this part.

Circular 230 lists conduct that may result in suspension or disbarment. A brief list of examples follows:

- Being convicted of an offense involving dishonesty or breach of trust
- Providing false or misleading information to the Treasury Department, including the IRS
- Negotiating a client's refund check or not promptly remitting a refund check
- Circulating or publishing matter, related to practice before the IRS, deemed libelous or malicious; using abusive language
- Forming or maintaining a partnership to practice tax law or accounting with a person suspended or disbarred from practice before the IRS
- Violating a Circular 230 rule
- Filing a complaint against IRS personnel if the practitioner knows the complaint to be false
- Advancing an argument or claim that the practitioner knows is frivolous
- Conviction of any felony involving conduct that renders the practitioner unfit to practice before the IRS
- Attempting to influence the official action of any IRS employee by bestowing a gift, favor, or thing of value
- Failing to electronically file when required to do so
- Preparing all or substantially all of, or signing, a tax return without a PTIN
- Unauthorized representation of a taxpayer before the IRS
- Failing to remit funds from a client to the IRS for payment of tax or other obligations
- Failing to make a federal tax return in violation of the federal tax laws
- Intimating ability to obtain special consideration from the IRS
- Instituting or maintaining proceedings primarily for delay

The commissioner may confer with a practitioner on allegations of misconduct whether or not a proceeding for suspension or disbarment has been instituted.

A Complaint Begins a Proceeding

A proceeding is begun by filing a complaint that names the respondent and is signed by an authorized representative of the IRS.

The complaint should contain a clear and concise statement of the allegations that constitute the basis of the proceeding.

- It is sufficient if it fairly informs the respondent of the charges, such that (s)he can prepare a defense.
- It should also contain any recommended sanctions and a demand for an answer.

Service of Complaint

The complaint must be served on the practitioner by means of one of the following:

- Delivery in person
- Private delivery service
- Certified mail
- First-class mail, if the certified letter is not accepted by the practitioner

Compliance Opportunity

A proceeding is not instituted until the complaint is received and until the practitioner is provided the opportunity to show or achieve compliance with all lawful requirements.

Consent to Suspension

A practitioner may offer to consent to suspension to avoid institution of a suspension or disbarment proceeding. However, the IRS is not bound to accept the offer.

Complaint Response

The practitioner must file an answer to the complaint in writing within the time specified.

- The practitioner must have at least 30 days from the date of service to file the answer.
- An extension may be granted if application is made to the Administrative Law Judge (ALJ).
- If an answer to the complaint is not filed, the ALJ may
  - Treat the respondent as if (s)he
    - Admitted each allegation and
    - Waived a hearing
  - Not require proof by evidence at a hearing
  - Decide against the respondent practitioner by default
- The answer to the complaint must
  - Contain a statement of facts that constitute the grounds for defense
  - Admit or deny each allegation set forth in the complaint or state (s)he lacks sufficient information to form a belief
- The practitioner may not
  - Deny a material allegation that (s)he knows to be true
  - State that (s)he lacks sufficient information to form a belief when (s)he has such information
- Special matters of defense must be affirmatively stated.
- Each allegation not denied is treated as admitted and proved.

Information Request

The IRS may request, for suspension or disbarment, any person to provide information concerning violation of the rules and to testify at a proceeding.

- A practitioner is required to honor the request unless, with a reasonable basis, (s)he believes in good faith and on reasonable grounds that the information is privileged.

Hearing

An ALJ presides at hearings on complaints for sanctions. If either party, after due notice of a hearing has been sent, fails to appear, (s)he is treated as having waived the right to a hearing and the ALJ may enter a decision against him or her by default.

- The hearing should occur within 180 days after the time for filing the answer.
- Unless otherwise ordered by the ALJ, each party shall file and serve on the opposing party a prehearing memorandum identifying, in general,
  - Exhibits,
  - Witnesses,
  - Depositions,
  - Expert witnesses, and
  - Undisputed facts.
- A respondent may appear in person, be represented by a practitioner, or be represented by an attorney who has not filed a declaration to practice before the IRS.
  - The representative need not be an enrolled agent.
- Hearings must be stenographically recorded and transcribed.
- Testimony of witnesses must be taken under oath or affirmation.
- An ALJ does not necessarily follow rules of evidence applied in courts of law and equity.
  - Evidence may be admitted in the form of depositions, exhibits, and proof of documents.
  - The ALJ may exclude evidence that is irrelevant, immaterial, or repetitious.
- If the sanction sought is censure or a suspension of less than 6 months, the standard of proof for Circular 230 proceedings is preponderance of the evidence. If the sanction sought is (1) a monetary penalty, (2) a suspension of 6 months or more, or (3) disbarment, the standard of proof is clear and convincing evidence.
- The ALJ must allow the parties reasonable opportunity to submit proposed findings and conclusions and reasons supporting them.

Appeal

Either party may appeal the ALJ’s decision to the Secretary of the Treasury within 30 days of its date.

Notice of Censure, Suspension, or Disbarment

The list of those receiving the issuance of a notice of censure, suspension, or disbarment from practice before the IRS includes

- IRS employees,
- Interested departments,
- Agencies of the federal government, and
- Appropriate state authorities.

Censure

Censure is a public reprimand to practitioners who violate the rules of practice. Censured practitioners may be subject to conditions imposed for a reasonable period in light of the gravity of the violation.

Suspension

A suspended practitioner is not allowed to practice before the IRS while the suspension is in effect.

Reinstatement after Disbarment

Five years after a practitioner's disbarment, the IRS may consider a petition for reinstatement.

- The IRS must be satisfied that the petitioner's conduct will comply with rules and regulations governing practice before the IRS.

Records Disclosure

The IRS will make available for public inspection the roster of

- Persons enrolled to practice;
- Persons censured, suspended, or disbarred from practice before the IRS; and
- Persons on the roster of all disqualified appraisers.

Other records of the Director of the Office of Professional Responsibility may be disclosed upon specific request, in accordance with the applicable disclosure rules of the IRS and the Treasury Department (Circular 230).

1.6 Renewal

To maintain active enrollment to practice before the IRS, enrolled agents must renew enrollment every third year after initial enrollment is granted.

- An enrolled agent's renewal schedule is determined by the last digit of the individual's Social Security or tax identification number as provided in Sec. 10.6(d) of Circular 230. The renewal schedules are staggered, with approximately one-third of enrolled agents renewing every year.
- To apply for renewal, individuals file Form 8554, *Application for Renewal of Enrollment to Practice Before the Internal Revenue Service*.

Application for Renewal

Application for renewal is based on the last digit of the enrolled agent's Social Security number or tax identification number.

- Enrolled agents whose Social Security number or tax identification number ends in 0, 1, 2, or 3, except those who receive their initial enrollment after November 1, 2024, must apply for renewal between November 1, 2024, and January 31, 2025. The renewal is effective April 1, 2025.
- Enrolled agents whose Social Security number or tax identification number ends in 4, 5, or 6, except those who receive their initial enrollment after November 1, 2025, must apply for renewal between November 1, 2025, and January 31, 2026. The renewal is effective April 1, 2026.
- Enrolled agents whose Social Security number or tax identification number ends in 7, 8, or 9, except those who receive their initial enrollment after November 1, 2026, must apply for renewal between November 1, 2026, and January 31, 2027. The renewal is effective April 1, 2027.
- Enrolled agents must renew between November 1 and January 31 of every third year. Enrolled agents who received their initial enrollment after November 1 and before April 2 of their renewal period do not have to renew until the next full renewal period after they received their initial enrollment.

Application for renewal is required to maintain active renewal status.

- Failure to receive notice of the renewal requirement from the IRS does not justify circumventing the requirement.
- A noncomplying enrolled agent will be given an opportunity to state the basis for the noncompliance with the possible consequence of being placed on the roster of inactive enrolled agents for a 3-year enrollment period.

Continuing Education

Renewal is conditioned on completing a minimum of 72 hours of continuing education (CE) credits during the 3-year enrollment cycle, including at least 16 hours in each of the 3 enrollment years (each enrollment year runs from January 1 to December 31).

- All programs are measured in contact hours. A contact hour is 50 minutes of continuous participation.
- Two hours per month of CE credit is required of an individual whose initial enrollment begins during a cycle.
- An individual who receives initial enrollment during an enrollment cycle must complete 2 hours of ethics or professional conduct for each enrollment year during the enrollment cycle. Enrollment for any part of an enrollment year is considered enrollment for the entire year.
- Qualified CE program. A course of learning may qualify for CE credit if it is a program designed to enhance professional knowledge in federal tax law, federal tax-related matters, qualified retirement plan matters, or federal tax-related ethics.
- Teaching. For each contact hour of a qualifying program, the following CE credit is awarded:
  - Two hours for actual subject preparation time, substantiated
  - One hour as instructor, discussion leader, or speaker

  NOTE: The maximum credit for instruction and preparation may not exceed 6 hours annually.

  NOTE: The maximum credit for publication preparation may not exceed 25% of the CE requirement of an enrollment cycle.
- Each individual applying for renewal must retain for a period of 4 years following the date of renewal of enrollment the documentation required with regard to qualifying CE credit hours.

1.7 Identity Theft

Identity theft occurs when someone uses another person's personal information such as name, Social Security number (SSN), or other identifying information, without permission, to commit fraud or other crimes.

Usually, an identity thief uses a legitimate taxpayer's identity to fraudulently file a tax return and claim a refund. Generally, the identity thief will use a stolen SSN to file a forged tax return and attempt to get a fraudulent refund early in the filing season.

A taxpayer may be unaware that this has happened until (s)he files his or her return later in the filing season and discovers that two returns have been filed using the same SSN. A taxpayer should be alert to possible identity theft if (s)he receives an IRS notice or letter that states:

- More than one tax return for the taxpayer was filed,
- The taxpayer has a balance due, has a refund offset, or has had collection actions taken against him or her for a year (s)he did not file a tax return, or
- IRS records indicate that the taxpayer received wages from an employer unknown to the taxpayer.

Taxpayers subject to identity theft will need to fill out Form 14039, *Identity Theft Affidavit*. Taxpayers should be aware that the IRS does not initiate contact with taxpayers by email to request personal or financial information. This includes any type of electronic communication, such as text messages and social media channels.

Study Unit Two

Tax Preparers and Penalties

A tax return preparer does **not** have to be a practitioner (i.e., an enrolled agent, a CPA, an attorney, or any other person authorized to practice before the IRS) in order to prepare tax returns. Additionally, a tax return preparer is subject to Circular 230 **only if** (s)he is also a practitioner.

However, **all** tax return preparers are subject to preparer penalties. Preparer penalties include penalties for understatement of a taxpayer's liability due to unreasonable positions or willful or reckless conduct, for disclosing taxpayer information, and for promoting abusive tax shelters.

2.1 Tax Preparers

Defining Tax Return Preparer

A tax return preparer is any person who prepares for compensation, or employs one or more persons to prepare for compensation, all or a substantial portion of any return of tax or claim for refund under the IRC (Title 26).

- Preparation of certain information returns is also within the scope of the tax return preparer rules.

Unless stated otherwise, tax return preparers include the following persons:

- A person who furnishes to a taxpayer or other preparer sufficient information and advice so that completion of the return is simply a mechanical matter is considered a tax return preparer.
- **Substantial portion.** A tax return preparer is a person who prepares for compensation, or employs another who prepares for compensation, a substantial portion of an applicable return.
  - Preparation outside the U.S. is included.
  - Length and complexity of the portion (or a schedule) are compared to the return as a whole.

- **Insubstantial Portion**
  - A portion or a schedule of a return is not considered substantial if it involves gross income, deductions, or amounts on the basis of which credits are determined of less than either
    - $10,000 or
    - $400,000 and less than 20% of the AGI (or GI if not an individual) shown in the return.
  - A person who gives advice only on specific issues is generally not considered to be a tax return preparer.
  - A tax return preparer of one return is not considered a preparer of another return because an entry or entries reported on the first may affect an entry reported on the second, unless the entries
    - Are directly reflected on the other return, e.g., a partnership and partner return, and
    - Represent a substantial portion of the second return. A substantial portion of the return includes gross income over $400,000 or greater than 20% of the gross income of the return.
- **Primary responsibility.** If more than one tax return preparer is involved in preparing a return or claim for refund, the one with primary responsibility for the overall substantive accuracy is considered the (only) preparer for purposes of the signing requirement.
  - The tax preparer with primary responsibility cannot be relieved of that responsibility by sharing any of the following functional tasks:
    - Acquiring needed information
    - Applying tax law
    - Completing the return
    - Reviewing the information, the application of tax law, and the return
    - Applying taxpayer policy
    - Advising a position regarding the law
    - Obtaining final determination or approval
- **Compensation.** If no compensation is provided for a person (or for his or her employee) to prepare a return or claim for refund, the person is not a tax return preparer.
  - Absent an explicit or implicit agreement for compensation, a person is not a tax return preparer, even if (s)he receives a gift, return service, or favor.

A person can be a tax return preparer without regard to educational qualifications or professional status.

The following are not tax return preparers:

- ⊘ An employee who prepares a return for the employer by whom (s)he is regularly and continuously employed
- ⊘ A fiduciary who prepares a return or refund claim for any person (the trust)
- ⊘ A person who prepares a refund claim in response to a notice of deficiency issued to another
- ⊘ A person who furnishes typing, reproducing, or other mechanical assistance
- ⊘ A person who merely gives an opinion about events that have not happened, i.e., planning

Mechanics of Preparing a Return

Significant aspects of tax return preparation are making factual inquiries and taking a position relative to tax law.

Inquiry of Client Financials

A tax return preparer may rely, if in good faith, upon information furnished by the taxpayer without having to obtain third-party verification.

- The preparer may not ignore the implications of the information furnished.
- The preparer must make reasonable inquiries if the information appears inaccurate or incomplete.
- **Deductions.** The preparer should make appropriate inquiries of the taxpayer to determine the existence of facts and circumstances required by an IRC section or regulations incidental to a deduction, including, e.g., substantiating documentary evidence, even if for a minimal amount.

Preparer's Position on Law

A tax return preparer may not adopt a position without **substantial authority** for the position.

- There is substantial authority for the tax treatment of an item only if the weight of the authorities supporting the treatment is substantial in relation to the weight of authorities supporting contrary treatment.
  - What constitutes substantial authority is defined by statute and IRS statements.
    - A revenue ruling, for example, constitutes legal authority that, together with other authority, may be found substantial.
  - All authorities relevant to the tax treatment of an item, including the authorities contrary to the treatment, are taken into account in determining whether substantial authority exists.
  - The weight of authorities is determined in light of the pertinent facts and circumstances.
  - A tax return preparer may not rely on unreasonable assumptions.
  - There may be substantial authority for more than one position with respect to the same item.
  - A taxpayer's belief that there is a substantial authority for the tax treatment of an item is a subjective determination. It is important to note that the IRS definition of the substantial authority standard is an objective standard and this objective standard is the one the IRS holds tax return preparers to.
- A penalty will not apply if the position was disclosed and there is a reasonable basis for the position.

Substantial and Reasonable Belief

For tax shelters, tax preparers are required to have both substantial authority and a reasonable belief for their position and this belief must be "more likely than not" the proper treatment.

The penalty for unreasonable undisclosed positions is an amount equal to the greater of $1,000 or 50% of the income derived from the position.

Errors and Omissions

Circular 230 addresses the possibility of an omission from a taxpayer's tax return in Sec. 10.21.

- It states that, when a practitioner discovers that a client has made an error or omission from any document filed with the IRS, (s)he must notify the client of the error or omission immediately.
- In addition, the practitioner must advise the client on the consequences of such an omission as provided by the IRC and regulations.

Procedural Requirements

Signature

A tax return preparer is required to sign the return or claim for refund after it has been completed and before it is presented to the taxpayer.

- If the preparer is unavailable for signature, another preparer must review the entire preparation of the return (or claim) and then must sign it.
- If more than one preparer is involved, the preparer with primary responsibility for the overall accuracy of the return or claim is considered the preparer for purposes of the signing requirement.
- A valid signature is defined by state law and may be anything that clearly indicates the intent to sign.
- Requirements exist for the use of alternative methods when signing as a tax return preparer and not on behalf of the taxpayer.
  - Original returns, amended returns, or requests for filing extensions that include a separate signature line for a paid tax preparer may be signed via computer software programs, mechanical devices, or rubber stamps.
- Preparers physically unable to manually sign returns must indicate “unable to sign” as the signature.
- In a situation in which one or more persons are employed as tax return preparers, only the employer is considered to be a tax return preparer.

Identifying Number

A return or refund claim prepared by a tax return preparer and filed with the IRS must include the preparer's identifying number.

- The identifying number of an individual is his or her preparer tax identification number (PTIN).
- The identifying number of the partnership or employer [employer identification number (EIN)], if applicable, also must be included.
- The address of the preparer's place of business where the return was prepared also must be included.
- The preparer is not required to sign or affix an identification number to the taxpayer's copy of a tax return.

Copy to Taxpayer

A tax return preparer is required to furnish a completed copy of the return or refund claim to the taxpayer no later than the time it is presented for the taxpayer's signature.

Employer of Preparers

A person who employs one or more tax return preparers is required to file a return setting forth the name, identifying number, and principal place of work of each employed tax return preparer.

- The IRS may approve an alternative reporting method.
- The requirements are satisfied if the tax return preparer
  - Retains a record of the information and
  - Makes it available for inspection upon request by the commissioner for the 3-year period following the relevant return period.
- A partnership is treated as the employer of the partners and shall retain and make available a record with respect to the employees (e.g., partners, others).
- A sole proprietor shall retain and make available a record with respect to himself or herself.

Records

A tax return preparer is required to retain a completed copy of each return or claim prepared for 3 years after the close of the return period.

- Records relating to employment taxes and federal withholding taxes must be maintained for at least 4 years after the later of (1) the due date of the tax or (2) the date such tax was paid.
- Alternatively, a list may be kept that includes, for the returns and claims prepared, the following information:
  - ✓ The taxpayers' names
  - ✓ Taxpayer identification numbers
  - ✓ Their tax years
  - ✓ Types of returns or claims prepared
- The return period means the 12-month period beginning July 1 each year.

Accuracy

While software is largely effective, users are advised to trust the software but verify all data inputs and outputs. For example, a complication stemming from the way brokerages keep stock transaction records means that software might import incomplete data, leading to possibly costly calculation errors. It is a taxpayer's responsibility to verify all tax information.

- Some items to consider when checking for accuracy include inconsistencies with the source data, miscalculations, the recognition of duplicate entries, a need to read diagnostics, the matching of inputs and outputs across forms, etc.

The IRS provides three forms for correcting erroneous information provided in an information return.

1. The IRS will send the taxpayer a Form 4852, *Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc*.
   - Form 4852 may also be used to report income when a W-2, 1099, or other reporting document is not received.
   - Form 4852 is designed to be used by a taxpayer to report disputed amounts reported in a W-2 or 1099.
2. Form 8082, *Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR)*, is used to report situations where an S corporation shareholder's return was going to be inconsistent with the corporate return, or a partner's return inconsistent with the partnership return.
   - When a difference between K-1 information and a Form 1040 has not been reported, the IRS can issue a correction notice without going through normal deficiency procedures, as though the taxpayer had made a math error on the return.
   - There is no administrative procedure to appeal the correction of an error in a return, so failure to properly report inconsistent treatment can lead to serious administrative difficulty that only the courts can fix.
3. The IRS will fill out Form 4598 when a taxpayer reports difficulty securing proper forms, wrong amounts, or other lack of cooperation from an employer. The taxpayer will be sent a letter that provides instructions and a copy of Form 4598.