

Tax Talk Today
OPR: A Balanced Approach
July 14, 2009
Q&A

Question

Are you supporting or opposing the proposed Bill that will require all unenrolled tax preparers to be licensed?

Answer

The Commissioner is undertaking a review and will consider all the pros and cons of this issue.

Question

Can ENROLLED AGENTS take the examination again for CPE credits - if so are they granted CPE for each section - how many credits?

Do they have to complete all three parts and again how many credits?

I have heard from other E.A.'s that we can re-take the exam and get CPE credits.

I have heard that we can take each section independently for CPE credits

I have heard that we must take the entire three sections for 30 CPE credits

Answer

§10.6(f)(3) allows EAs to retake the SEE during the enrollment cycle in lieu of CPE credits along with a minimum of 16 hours of qualifying CPE during the last year of an enrollment cycle.

Circular 230 §10.6 (f)(3) Periodic examination

(i) Individuals may establish eligibility for renewal of enrollment for any enrollment cycle by-

(A) Achieving a passing score on each part of the Special Enrollment Examination administered under this part during the three year period prior to renewal; and

(B) Completing a minimum of 16 hours of qualifying continuing education during the last year of an enrollment cycle.

Question

As a matter of best practices, when you retire, what actions should you take? I wrote to my clients and told them that I would have their records for 3 years but do not plan to work in 2010. I gave them my home phone number if they need any info from me.

Answer

Response provided by practitioners from the show

By statute (IRC 6107), a tax return preparer must retain a completed copy of the tax return or on a list, the name and taxpayer identification number of the taxpayer for 3 years. The questioner seems to be aware of this requirement.

Contacting the state boards and malpractice insurance provider, would provide the questioner with good information with which to make a decision on best practices. It will also provide the questioner with some peace of mind regarding liability exposure during his/her retirement.

There's really nothing in Cir. 230 about this, with the possible exception of the "best practices" provision.

So it's really a broader question about the practitioner's other ethical responsibilities (under state bar or accountant regulation) and/or malpractice exposure in retaining files and/or assisting former clients upon retirement. As to which, I would first check with the applicable state authority (bar or accountancy board) to see if it has any hard rule on this; I think some states do have minimum file retention periods written into their rules (or in a case or opinion somewhere). Secondly, I'd check with my malpractice insurer for its recommendation under your state's tort law. And finally, I think the 3 years the questioner suggests is a minimum (due to the general tax statute of limitations), and that 6 years may be appropriate - for the same reasons most practitioners tell their clients to keep things 6 years (i.e. the extended SoL for >25% omissions from income or the criminal tax SoL).

Other than file retention, a practitioner obviously has some ongoing duties to a former client (e.g., confidentiality or even privilege), and most states have some kind of rule regarding handing former clients off. (It usually can be boiled down to, do nothing in the handoff that will harm your former client.) Again, check your local rules and your insurer's recommendations.

Subject to those caveats, you generally will have no other obligations to help out former clients. Enjoy your retirement!

Question

If I complete Tax Returns for two different clients and later find out that they were married, what if any is my ethical obligation?

Did it result in the tax returns being erroneous? Then you have an obligation to inform the clients of the error and any possible penalties that may result.

Answer

Going forward, you could not represent both unless you reasonably believe that you could competently and diligently represent both, the representation is not otherwise prohibited by law, and each affected client waives the conflict of interest and gives informed consent, confirmed in writing.

Question

Does the IRS believe that the provisions of Circular 230 apply to in-house practitioners such that in-house practitioners need to be attorneys, CPAs, or enrolled agents?

Answer

In-house practitioners who otherwise are attorneys or CPAs that practice before the Service or are enrolled agents are subject to Cir. 230.

Question

Do I understand correctly that an attorney may not notarize an affidavit or other document to be presented to IRS? Suppose the document was prepared for presentation to someone else and later or also is to be presented to IRS? Can the employee of the attorney be the notary?

Answer

Under 10.26, a practitioner may not take acknowledgements, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the IRS and for which he or she is employed by counsel, attorney, or agent, or in which he or she may be in any way interested.

Thus, if you are not interested or employed with regard to the matter – then you may notarize it. Similarly if it is a matter unrelated to a Service matter when notarized, but later is used in that context, it would not be a violation.

Question

I am a CPA who prepares tax returns, but I have never represented a client before the IRS. Am I covered by Circular 230?

Answer

Practice also includes writing tax opinions, so representation isn't the only mode of practicing before the Service. However, if you truly do not practice before the Service, you are not subject to Circular 230

Question

What is an unconscionable Fee?

Answer

It is a facts and circumstances question.

Question

At this time the practitioner community has no reasonable schedule of fees for service to follow. Do you think OPR could develop a suggested list of fees for service which practitioners could possibly follow in their practice?

Answer

Fees are dependent upon issues such as the competency level of the practitioner and geographic location.

Question

If a tax preparer is not an enrolled agent, and they misrepresent a client's information, what are the repercussions if they are not 'under' the Circular 230 rules?

Answer

If reported, the Small Business/Self-Employed division (SBSE) can possibly take action against the preparer.

Question

We are EAs, and have no problems representing both our own clients, as well as those not our current clients. However, we belong to a small group of practitioners who are not necessarily EAs. To what level can an unenrolled practitioner represent taxpayers when they have not prepared the return? And which form should they use?

Answer

Unenrolled practitioners may use form 8821 for information purposes but must not represent on any returns they have not prepared.

Question

Will you define "unenrolled preparer?"

Answer

This is generally used to refer to a return preparer who is not an enrolled agent. However, it is not a term of art.

Question

In discussion of a national licensing requirement of some type, how many states do not have their own licensing & continuing education requirements in order to prepare tax returns?

Answer

Most states do not have licensing and continuing education requirements. California and Oregon have programs, and Maryland is in the planning stages of a program.