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## PRODUCT & SERVICE GUIDE

# IRS Keeps Close Watch on Professional Conduct of CPAs and EAs

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In the first instance, the IRS announced that its Office of Professional Responsibility (OPR) has reached a settlement with a tax practitioner for violating professional rules of conduct set forth in Circular 230, the IRS playbook regarding advertising (IR-2018-155, 7/25/18). Notably, the practitioner misled potential clients into thinking that his firm employed multiple attorneys, Enrolled Agents (EAs), CPAs and former IRS employees. In fact, he was the only Circular 230 practitioner at the firm.

Furthermore, the practitioner engaged in other false advertising practices, primarily focusing on overstating tax relief available through an Offer in Compromise (OIC). He has agreed to five years of probation and a 12-month suspension of practice before the IRS if the probation is violated. Also, the firm has agreed to pay a monetary penalty based on a percentage of the gross income from the misconduct.

The second incident resulted in the OPR censuring a tax practitioner for violating Circular 230 "conflict of interest" rules (IR-2018-154, 7/25/18). Briefly stated, the practitioner was retained by a client for assistance in a settlement matter. The

practitioner, who was fully aware of the terms of the agreement, knowingly provided misleading information to a third party, causing foreseeable damage to that third party.

Practitioners who are censured by the IRS are listed in the Internal Revenue Bulletin. Thus, this is a public reprimand. Unlike disbarment or suspension, censure doesn't affect eligibility to practice before the IRS.

The OPR has oversight over interpreting and applying the regulations governing practice before the IRS and administering Circular 230. It maintains exclusive responsibility for professional practitioner conduct and discipline, including instituting disciplinary proceedings and pursuing sanctions. The OPR operates independently of other enforcement divisions of the IRS.

The scope and nature of the Circular 230 requirements are broad. Specifically, this applies to —

- State-licensed attorneys and CPAs authorized and in good standing with their state licensing authority who interact with tax administration at any level.
- Individuals enrolled to practice before the IRS: EAs, Enrolled Retirement Plan Agents and Enrolled Actuaries.
- Individuals providing appraisals used in connection with federal tax matters (e.g., charitable contributions; estate and gift assets; fair market value for sales gain, etc.).
- Individuals who are unenrolled and unlicensed (as attorneys or CPAs) and those who represent taxpayers before IRS examination, customer service, and similar personnel, including the Taxpayer Advocate Service (TAS), in connection with returns they prepared and signed.
- Licensed and unlicensed individuals who give written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement which the IRS determines as having a potential for tax avoidance or evasion.
- Any individual submitting a power of attorney in connection with limited representation of a taxpayer with respect to a specific matter before the IRS.

As shown in the two latest examples, the OPR has several disciplinary weapons at its disposal, including censure, suspension of practice privileges and disbarment. A suspension can last for a fixed term or be indefinite. The practitioner must request, and be granted, reinstatement by the OPR before practice privileges are restored. When a practitioner is suspended for a fixed term, the individual can't petition to be reinstated to practice before the term's end.

When a practitioner is disbarred, he or she can't petition for reinstatement for five years. The OPR can also propose a monetary penalty on any practitioner who engages in conduct subject to sanction. The monetary penalty may be assessed against the individual or a firm, or both, and can be added to any censure, suspension or disbarment.

Before any of the above sanctions is imposed, the practitioner or firm is provided with notice and an opportunity for a conference and an opportunity for a formal proceeding.

**Practical advice:** Be on your best behavior. You don't want to incur the wrath of the IRS and jeopardize your livelihood.

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