

Inside View from the IRS: Treasury Circular
No. 230 - Regulations Governing
Practice Before the IRS

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Exhibit
Exhibit A PowerPoint Presentation 2-3

**Exhibit A
PowerPoint Presentation**



THE OFFICE OF PROFESSIONAL RESPONSIBILITY

Standard Bearer for
Integrity in Tax Practice

Karen L. Hawkins, Director

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The Statute & Regulations

- 31 U.S.C. §330 (1884)
- 31 C.F.R. Part 10 (cir. 1886)
- Authorizes regulation of representatives of persons before the Department of the Treasury

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"Fitness" 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

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Circular 230

- Online at www.irs.gov/pub/irs-pdf/pcir230.pdf
- Substantial revisions effective August 2, 2011
- NPRM – Additional Revisions Proposed – Final Regs pending

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Calendar Year 2012 Discipline Results

<u>Activity</u>	<u>Attorney</u>	<u>CPA</u>	<u>EA</u>	<u>Unenrolled</u>	<u>Totals</u>
■ Total Receipts					516
■ Disbarments (FAD/Consent)	-	1	-	1	2
■ Suspensions (FAD/Consent)	2	2	3	-	7
■ Expedited Suspensions	29	25	7	-	61
■ DDA/Other Conditions	-	1	2	-	3
■ Censure	1	2	1	-	4
■ Reprimands/Soft Letter					150
■ Cease & Desists					50
■ CWOS, LOJ , NCOA, CWOA					409
■ Reinstatements					25
■ Total Dispositions					813

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Key Circular 230 Due Diligence Provisions

- Diligence as to Accuracy (10.22)
- Due Diligence Standards – Returns/Docs (10.34)
- Competence (Proposed 10.35)
- Requirements for Written Advice (Proposed 10.37)
- Oral or Written Opinions (10.51(a)(13))

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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.

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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

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Disclosure re: Unreasonable Positions (10.34(c))

- Advised position?
- Prepared or signed return?
- Submitting docs/other papers to IRS?
- Then-
 - Must Advise Client of Potential Penalties and their Avoidance through Disclosure

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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.

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Reliance on Client Data- 10.34(d)

- 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 or incomplete information
- No Willful Blindness.

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Proposed §10.35.

- A practitioner must possess the necessary competence to engage in practice before the Internal Revenue Service. Competent practice requires the knowledge, skill, thoroughness, and preparation necessary for the matter for which the practitioner is engaged.
- See ABA Model Rule 1.1, "Competence"
- AICPA Code of Professional Conduct Article V, "Due Care".

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Prop. §10.37 Requirements for written advice

- Reasonable factual and legal assumptions
- Reasonably consider all relevant facts
- Reasonable efforts to identify and ascertain the relevant facts
- Not rely upon representations, statements, findings, or agreements if reliance would be unreasonable
- Not take into account the possibility that a tax return will not be audited, or that a matter will not be raised on audit.

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Prop. 10.37 (cont)

- Reliance on taxpayer is unreasonable if the practitioner knows or should know that one or more representations, or assumptions on which any representation is based, are incorrect or incomplete
- May only rely on the advice of another practitioner if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances .
- May not rely on another practitioner who has a conflict; or is incompetent

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Oral or Written Opinions – 10.51(a)(13)

- Disreputable/Incompetent Conduct
 - False opinions-knowingly, recklessly, through gross incompetence;
 - Intentional or recklessly misleading opinions;
 - Pattern of Incompetent Opinions

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10.51(a)(13) (cont)

- False Opinion =
 - knowing misstatements of fact/law;
 - assertion of unwarranted positions;
 - Counseling/assisting conduct known to be illegal/fraudulent;
 - concealing matters required by law to be revealed.

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10.51(a)(13) (cont)

- Reckless conduct=
 - highly unreasonable omission/misrepresentation involving extreme departure from standards of ordinary care that a practitioner should observe under the circumstances
- Gross Incompetence=
 - gross indifference, grossly inadequate preparation, consistent failure to perform obligations to client
- Patterns matter

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More Info?

- Office of Professional Responsibility
1111 Constitution Ave. N.W.
SE:OPR Rm. 7238
Washington, D.C. 20224
- Information on OPR, Circular 230 and Discipline visit:
<http://www.irs.gov/Tax-Professionals/Circular-230-Tax-Professionals>

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