

Issue Number: 2025-4. In-house tax professionals and Circular 230

Given the complexity of modern business, it is hardly surprising that most companies of substantial size have tax professionals on their payroll to handle tax planning and compliance matters. The widespread presence of in-house tax professionals can raise questions about whether and to what extent they are subject to practice standards in [Circular 230](#), *Regulations Governing Practice before the Internal Revenue Service* (31 CFR Subtitle A, Part 10). The IRS Office of Professional Responsibility (OPR) has exclusive authority to administer and enforce those standards and for sanctioning “practitioners.” (See 31 USC 330 and Circular 230, section 10.1.) This Alert from the OPR provides guidance on some of those questions.

1. Are in-house tax professionals regulated by Circular 230?

Under Circular 230, the core categories of individuals who are authorized to practice before the IRS by virtue of their professional credentials are attorneys, certified public accountants (CPAs), and enrolled agents (EAs). (Circular 230, section 10.3(a), (b), and (c).)¹ While there is no iron-clad rule, most, but not all, in-house tax professionals fall within the first two of these three categories. As such, they are eligible to practice before the IRS if they meet one additional requirement: They file a written declaration that they are qualified to represent a person before the IRS who has authorized the practitioner to act on their behalf (i.e., Form 2848, *Power of Attorney and Declaration of Representative*, signed by both the practitioner and the client/taxpayer).

In addition, under Circular 230's “limited practice” rules, bona fide officers and regular full-time employees of a corporation (including a parent, subsidiary, or other affiliated corporation), association, or organized group may practice before the IRS, even if they are not otherwise a practitioner. (Circular 230, section 10.7(c).) As is the case with attorneys, CPAs, and EAs, individuals who engage in limited practice must submit a valid Form 2848, which is the prescribed authorization form.

2. Do in-house practitioners “practice before the Internal Revenue Service”?

Not every action by an in-house practitioner is, by itself, covered by Circular 230 or within the OPR’s jurisdiction. To fall within the ambit of Circular 230, an individual must “practice

¹ See also 5 USC 500 which states, in part:

(b) An individual who is a member in good standing of the bar of the highest court of a State may represent a person before an agency on filing with the agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

(c) An individual who is duly qualified to practice as a certified public accountant in a State may represent a person before the Internal Revenue Service of the Treasury Department on filing with that agency a written declaration that he is currently qualified as provided by this subsection and is authorized to represent the particular person in whose behalf he acts.

And section 10.2(a)(1) and (2) of Circular 230 (defining “attorney” and “certified public accountant,” respectively).

before the” IRS, which “comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service.” (Circular 230, section 10.2(4).) Covered presentations include, but are not limited to:

[P]reparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; 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; and representing a client at conferences, hearings, and meetings.

While this definition is broad, it does not include activities relating to merely preparing or reviewing prepared tax returns, unless the in-house practitioner prepares, approves, or files the returns in connection with representing their employer in a matter before the IRS. For example, if an in-house tax professional prepares an amended tax return as part of their representation of the taxpayer in an IRS examination, the preparation of the return would be considered practice before the IRS.

3. If an in-house tax professional does not hold an active, up-to-date certificate or license (as a CPA or lawyer) or enrollment card (as an EA), can they still engage in practice before the IRS?

Although most in-house tax professionals are either actively licensed attorneys or CPAs, any officer or full-time employee can perform "limited practice" before the IRS regardless of whether any professional credential they have is current and whether they are in good standing with their state board of accountancy or state bar (or court system, in jurisdictions that do not have an integrated bar). Thus, an in-house tax professional may represent their company even if they have not renewed their law license or CPA certificate; however, the individual cannot do so if that officer or full-time employee has been suspended or disbarred from practice before the IRS. (Circular 230, section 10.7(c)(2)(i).) No one under suspension or disbarment can represent any person before the IRS.

4. Must all in-house tax professionals who work on a company's federal tax matters and interact with IRS personnel be listed on a Form 2848, Power of Attorney and Declaration of Representative?

If a company wants a certain full-time employee (irrespective of their title or specific duties) to advocate, defend, negotiate, or dispute issues or positions with the IRS on the company's behalf, then a signed Form 2848 designating that professional must be submitted. Form 2848 formally documents the taxpayer's authorization of the designated in-house professional(s) as its representative(s). It is also the professionals' declaration that:

- They are not currently suspended or disbarred from practice, or ineligible to practice, before the IRS.
- They understand that they are subject to the requirements and limitations in Circular 230.
- They are authorized to represent the taxpayer as an attorney, CPA, EA, or an officer or full-time employee of the taxpayer (designations **a**, **b**, **c**, **d**, and **e** of Part II of Form 2848).

Not every corporate employee who interacts with the IRS, however, needs to be included on the Form 2848. As mentioned above, when an employee is just providing information to, or accepting information from, the IRS, there is no representational activity or "practice" occurring and the Form 4764, *LB&I Examination Plan*, will suffice, or Form 8821, *Tax Information Authorization*. As its title indicates, Form 4764 is used in the examination of taxpayers within the purview of the Large Business and International (LB&I) operating division.

5. Given that their jobs may often include acting in multiple roles, are there times when an in-house tax professional is a "practitioner" and other times when they are not?

An in-house professional could, for example, be at times an advisor (on an array of tax or tax-related matters), a planner of tax-and-business structuring, a preparer of filings with and submissions to the IRS, and a participant in a tax examination that their employer is undergoing. Whether a tax professional's various activities are practice before the IRS depends on all the related facts and circumstances, including the type or nature of the particular activity, the professional's role and level of involvement in the activity, and the duties they perform in connection with their involvement. But there is no authority or basis for concluding that an activity that is "practice" for an outside professional does not also constitute "practice" for an in-house one. So, while an in-house tax professional's relationship with their employee, who is also their client, is different from the relationship that an outside professional has with the same client, the in-house professional is not the client (the taxpayer) itself.² The in-house practitioner, like an outside practitioner, acts as an agent, or representative, of the taxpayer.

Conclusion

Every attorney, CPA, EA, or other tax professional who practices before the IRS is subject to Circular 230 regardless of whether they operate on their own as a solo practitioner, are with a firm, or are an employee or officer of an entity taxpayer. The precise application of the Circular's standards to the professional will depend on the facts of each unique situation.

If you have questions about this article, please contact our office by phone at 202-317-6897 or eFax at 855-814-1722.

² Except possibly in the case of an officer appointed by the board of directors.