The "Safety Net" for Tax Professionals

January 14, 2025

Internal Revenue Service
Office of Professional Responsibility
SE:OPR, Room 7238/IR
1111 Constitution Avenue NW
Washington, DC 20224

Re: Comments on proposed changes to C230

The Tax Pro Fellowship is an internet organization of tax professionals, CPAs, Attorneys, Enrolled Agents, RTRPs, AFSPs and others who are serious about the business of tax.

We are grateful for the opportunity to comment on the proposal to change C230 and are interested that the success of this project will impact on and improve upon the business of tax.

We have asked our Executive Director, Beanna J. Whitlock, EA, to comment on our behalf. She is also a Tax Professional and served the IRS as Director of National Public Liaison under Commissioner Mark Everson. She uses C230 to teach Ethics classes and has conveyed the useful purpose and reference for action C230 can be.

The IRS Office of Professional Responsibility generally has responsibility for matters related to practitioner conduct, and exclusive responsibility for discipline, including disciplinary proceedings and sanctions. The proposed regulations, if finalized, would amend Circular 230 in various ways to account for changes in the law and the evolving nature of tax practice.

Among other changes, the proposed regulations would remove or update the parts of Circular 230 related to registered tax return preparers and tax return preparation, as well as contingent fees to reflect changes in the law since the prior amendments to Circular 230 in 2011 and 2014. The proposed regulations would also revise or eliminate other provisions that are out of date.

Additionally, the proposed regulations would incorporate new provisions that better align Circular 230 with the current practice environment, such as requiring that practitioners maintain technological competency as part of their practice before the IRS. The proposed regulations would also clarify some provisions, such as confirming that OPR retains jurisdiction over practitioners who have been suspended or disbarred from practice.

Finally, the proposed regulations would provide rules related to appraisers, including the standards for disqualification.

While the tax professional community has great respect and admiration for the Office of Professional Responsibility, we find the proposed changes to first, be ill-thought in the nature of omitting the RTRP credential and second, lacking in the legal term of practice before the IRS.

We suggest the following considerations:

RTRP

An estimated 60 percent of U.S. taxpayers used tax return preparers in 2009. The idea of a competency test came from the Return Preparer Review, the product of a series of public hearings with tax preparers, associations and consumer advocates. The review was prompted by the growth in the tax preparation industry, much of it unregulated. There were increasing concerns within the IRS and growing congressional interest in the accuracy of tax return preparation and service to the nation's taxpayers by tax professionals. One U.S. Government Accountability Office report found that of 19 individual tax returns taken to professional tax return preparers, all 19 contained errors and only two reflected the correct refund amount.

After the Return Preparer Review was announced in January 2010, the IRS instituted the Return Preparer Initiative that required all professional tax return preparers to register with the IRS and to obtain a Preparer Tax Identification Number (PTIN). It also required a previously unregulated category of preparers, then known as unenrolled preparers, to pass a one-time competency test, and to take 15 hours of continuing education credits annually. Those who passed the test and a tax compliance check would be given a new credential: Registered Tax Return Preparer. The test was launched in November 2010. Preparers who have PTINs and need to test will have until December 31, 2013 to pass it, but the IRS has urged candidates to take it as soon as possible.

Starting January 1, 2014, only Registered Tax Return Preparers, Certified Public Accountants, attorney and Enrolled Agents will be authorized to prepare and sign federal individual tax returns for compensation.

Who was required to take the RTRP Test

Under the rules prior to their suspension in January 2013, the general rule was that any paid tax return preparer who was not a Certified Public Accountant (CPA), attorney or Enrolled Agent was required to take the Registered Tax Return Preparer test. Preparers who do not prepare any Form 1040 series returns were exempt. Also exempt were non-signing preparers supervised by CPAs, attorneys or Enrolled Agents, and who worked at firms 80 percent owned by CPAs, attorneys or Enrolled Agents. The IRS estimates that there are more than 340,000 tax return preparers who must take and pass the test. An IRS YouTube video explained the test. The IRS wanted as many preparers as possible to take the test before the IRS launched a new searchable database allowing prospective clients or potential tax prep employers to search preparers' names and credentials.

CPAs, attorneys and Enrolled Agents are already tested during the process of obtaining their credentials, and were exempt from the RTRP testing requirement. CPAs have passed the Uniform Certified Public Accountant Examination, attorneys have passed bar exams, and Enrolled Agents have passed a three-part IRS test called the Special Enrollment Exam (SEE), which covers individual taxation, business taxation and representation issues.

The Registered Tax Return Preparer Test was a timed, 2.5-hour exam. The test was available only in English. The exam had 120 questions. Tax-related questions were in multiple-choice format. Ethics questions were true and false. The questions were developed by the IRS and the IRS test vendor, Prometric, Inc., based on a job analysis survey sent to 700,000 tax return preparers. The computer-based exam must be taken at one of 260 U.S. test centers operated by Prometric. The test covered preparation of the Form 1040 series and its related schedules. During the test, preparers had electronic access to Publication 17, Tax Guide for Individuals, the Form 1040 and Form 1040 Instructions. Test-takers were prohibited from bringing their own materials into the testing room.

Subject areas included:

- Preliminary work and collection of taxpayer data
- Treatment of income and assets
- Deductions and credits
- Other taxes
- Completion of the filing process
- Practices and procedures
- Ethics

Individuals completing and passing this examination were awarded the RTRP, Registered Tax Return Preparer credential and were required to complete education courses annually to retrain this credential.

As CPAs, Attorneys and Enrolled Agents maintained their credentials in Accounting, Law and Practice Before the IRS, many chose to take what they believed would be the ultimate credential in tax return preparation, the RTRP.

Our fears are twofold:

1. Those taking and passing the RTRP will feel deceived and the credibility of any future credential the IRS may offer impugned.
2. With IRS already replacing the RTRP with the Annual Filing Season Program Participant, AFSP, all credibility of licensing offered by IRS is at jeopardy

Frankly, why go through this effort to have IRS disregard the credential at a future date.

Technical Competence

The terminology used is vast in concept and needs to be much more disciplined. Whether a tax return preparer chooses to use technology to improve job performance is a personal decision and no government agency has the right to infringe upon free enterprise. Make no mistake about it, the business of tax is a business and the quality of the work product is the concern of the IRS, not how the work product is completed.

The term Technical Competency is wide-ranging:

> Tax Law Competency – not taking on work for which tax professional is neither knowledgeable nor experienced. This is covered in the current C230.
>
> Electronic Competency – using software to allow electronic signature of documents, email with encryption, as well as layers of authentication are essential but must be the choice of the tax professional with only the parameters of acceptance stated by C230. A Best Practice addition.

Where technical competency must be addressed in the revised C230 is in securing taxpayer information. Tax Professionals are the treasure trove of information on taxpayers and the guidance on protecting taxpayer data must be clear and without exception.

Other

Court cases which disciplined OPR as to the scope of "practice before the IRS", cases that clearly defined the ability to charge a contention fee and when OPR could not consider tax preparation to be "representation" must be considered in the revision to C230.

Closing

The revision in Circular 230 Federal Code of Regulation is long overdue and needed, but the FACA committees of IRS should be enlisted to review and not only consider the updating of C230 but think out of the box to see the issues that are coming quickly. The future will bring unparalleled changes and the new C230 should anticipate and give guidance.

We would even suggest that employees of the Office of Professional Responsibility visit the offices of tax professionals to understand the duties and obligations of working in the business of tax. The experience of "walking in our shoes" will add a dimension of knowledge to Circular 230. And increase the purpose and the use of C230.

Again, we thank you for the opportunity to comment on these revised changes and wish you OPR the very best success.

After all, we are your end user, and our success depends upon your success.

Sincerely,

Beanna J. Whitlock, EA

Executive Director

Tax Pro Fellowship, LLC