# Bond Case Briefs

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## IRS Outlines Professional Responsibilities Under Circular 230.

The IRS has posted to its website information on who is subject to the Circular 230 practice standards and information on some of their responsibilities.

GUIDANCE TO PRACTITIONERS REGARDING PROFESSIONAL OBLIGATIONS
UNDER TREASURY CIRCULAR NO. 230

Who is Subject to Treasury Circular No. 2301

The provisions of Treasury Circular No. 230 apply to:

- Attorneys
- Certified Public Accountants
- Enrolled Agents
- Enrolled Actuaries
- Enrolled Retirement Plan Agents
- Appraisers
- Individuals representing others pursuant to limited practice regulations
- Individuals giving written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type OPR determines to have a potential for tax avoidance or evasion.

The Internal Revenue Service's Office of Professional Responsibility (OPR) may propose the censure, suspension, or disbarment of any practitioner, and the disqualification of any appraiser, from practice before the Internal Revenue Service if the individual is shown to be incompetent or disreputable, fails to comply with any regulation in Treasury Circular No. 230, or with intent to defraud, willfully and knowingly misleads or threatens a client or prospective client. OPR may also propose a monetary penalty for an individual, and/or the employer of any individual subject to Treasury Circular No. 230, for violations of Circular 230 if (i) the violations occurred in connection with the individual's activities on behalf of the employer and (ii) the employer knew or reasonably should have known of the individual's conduct. Treasury Circular No. 230 § 10.3, § 10.7, § 10.8, § 10.50. 31 U.S.C. 330(b).

Selected Obligations Under Treasury Circular No. 230

The following is a summary description of certain obligations under Treasury Circular No. 230. This summary does not address all provisions of the Regulations. You should read the Circular/Regulations for a more complete understanding of the duties and obligations of someone practicing before the IRS.

Due Diligence. You must exercise due diligence in preparing and filing tax returns and other documents/submissions, and in determining the correctness of representations made by you to your client or to the IRS. You can rely on the work product of another person if you use reasonable care in

engaging, supervising, training, and evaluating that person, taking into account the nature of the relationship between you and that person. You generally may rely in good faith and without verification on information furnished by your client, but you cannot ignore other information that has been furnished to you or which is actually known by you. You must make reasonable inquiries if any information furnished to you appears to be incorrect, incomplete or inconsistent with other facts or assumptions. Treasury Circular No. 230 § 10.22, § 10.34(d).

Competence. You must have the necessary knowledge, skill, thoroughness, and preparation necessary for the matter for which you have been engaged. You may be able to provide competent representation by researching and educating yourself on the issue or by consulting with another tax professional who has established competence in the field in question, but in doing so you must consider the requirements of Internal Revenue Code § 7216. Treasury Circular No. 230 § 10.35.

Conflicts of Interest. A conflict of interest exists if representing one of your clients will be directly adverse to another client. A conflict of interest also exists if there is a significant risk that representing a client will be materially limited by your responsibilities to another client, a former client or a third person, or by your personal interests. When a conflict of interest exists, you may not represent a client in an IRS matter unless (i) you reasonably believe that you can provide competent and diligent representation to all affected clients, (ii) your representation is not prohibited by law, and (iii) all affected clients give informed, written consent to your representation. You must retain these consents for 36 months and make them available to the IRS upon request. Treasury Circular No. 230 § 10.29.

Tax Return Positions. You cannot sign a tax return or refund claim or advise a client to take a position on a tax return or refund claim that you know or should know contains a position (i) for which there is no reasonable basis, (ii) which is an unreasonable position under Internal Revenue Code § 6694(a)(2), or (iii) which is a willful attempt to understate tax liability or a reckless or intentional disregard of rules or regulations. An unreasonable position is one which lacks substantial authority as defined in IRC § 6662 but has a reasonable basis, and is disclosed. For purposes of Circular 230, disclosure requires that you inform a client of any penalties that are reasonably likely to apply to the client with respect to a tax return position if you advised the client regarding the position or you prepared or signed the tax return and how to avoid the penalties through disclosure on the tax return (or, by not taking the position). Treasury Circular No. 230 § 10.34.

Written Tax Advice. In providing written advice concerning any Federal tax matter, you must (i) base your advice on reasonable assumptions, (ii) reasonably consider all relevant facts that you know or should know, and (iii) use reasonable efforts to identify and ascertain the relevant facts. You cannot rely upon representations, statements, findings, or agreements that are unreasonable or that you know to be incorrect, inconsistent, or incomplete. You must not take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit in evaluating a Federal tax matter. In providing your written advice, you may rely in good faith on the advice of another practitioner only if that advice is reasonable considering all facts and circumstances. You cannot rely on the advice of a person whom you know or should know is not competent to provide the advice or who has an unresolved conflict of interest as defined in 10.29. Treasury Circular No. 230 10.37.

Errors and Omissions. If you know that a client has not complied with the U.S. revenue laws or has made an error in, or omission from, any return, affidavit, or other document which the client submitted or executed under U.S. revenue laws, you must promptly inform the client of that noncompliance, error, or omission and advise the client regarding the consequences under the Code and regulations of that noncompliance, error, or omission. Depending on the particular facts and circumstances, the consequences of an error or omission could include (among other things) additional tax liability, civil penalties, interest, criminal penalties, and an extension of the statute of

limitations. Treasury Circular No. 230 § 10.21.

Furnishing Information to the IRS. If you receive a proper and lawful request for records or information from the IRS, you must promptly submit the requested information unless in good faith you reasonably believe that it is privileged. If the requested information is not in your or your client's possession, you must promptly inform the requesting IRS personnel of that fact. You must also provide any information you may have regarding who is in possession of the requested information, but you are not required (i) to make inquiries of anyone other than your client or (ii) to verify information provided by your client regarding the person(s) in possession of the requested information. You must not interfere with any lawful IRS attempt to obtain information unless in good faith you reasonably believe that the information is privileged. You cannot advise a client to submit any document to the IRS that is frivolous or that contains or omits information in a manner demonstrating an intentional disregard of a rule or regulation unless you also advise the client to submit a document that evidences a good faith challenge to the rule or regulation. Treasury Circular No. 230 § 10.20, § 10.34(b).

Handling Matters Promptly. You cannot unreasonably delay the prompt disposition of any matter before the Internal Revenue Service. This applies with respect to responding to your client as well as to IRS personnel. You cannot advise a client to submit any document to the IRS with the purpose of delaying or impeding the administration of the Federal tax laws. Treasury Circular No. 230 § 10.23, § 10.34(b).

Client Records. On request of a client, you must promptly return any client records necessary for the client to comply with his or her Federal tax obligations, even if there is a dispute over fees. You may keep copies of these records. If state law allows you to retain a client's records in the case of a fee dispute, you need only return the records that must be attached to the client's return but you must provide the client with reasonable access to review and copy any additional client records retained by you that are necessary for the client to comply with his or her Federal tax obligations. The term "client records" includes all written or electronic materials provided to you by the client or a third party. "Client records" also include any tax return or other document that you prepared and previously delivered to the client, if that return or document is necessary for the client to comply with his or her current Federal tax obligations. You are not required to provide a client with of your work product — i.e., any return, refund claim, or other document that you have prepared but not yet delivered to the client if (i) you are withholding the document pending the client's payment of fees related to the document and (ii) your contract with the client requires the payment of those fees prior to delivery. Treasury Circular No. 230 § 10.28.

Fee Arrangements. You cannot charge an unconscionable fee for services in any matter before the IRS. You also cannot charge a contingent fee for services in any IRS matter except for services in connection with:

- An IRS examination of or challenge to an original tax return;
- An IRS examination of or challenge to an amended tax return or refund claim, but only if the amended return or claim is filed (before/or) no later than 120 days after the taxpayer receives a written notice from the IRS of the examination of or written challenge to the original tax return;
- A claim for credit or refund filed relating solely to a determination of interest or penalties;
- Any judicial proceeding arising under the Internal Revenue Code Treasury Circular No. 230; or
- Whistleblower Claims Under IRC Sec 7623.

Treasury Circular No. 230 § 10.27, IRS Notice 2008-43.

Solicitation. With respect to any Internal Revenue Service matter, you may not use any form of

public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim. You also may not assist, or accept assistance from, any person or entity who obtains clients or otherwise practices in violation of the solicitation provisions. Treasury Circular No.230 § 10.30.

Negotiating Checks. You may not endorse, negotiate, electronically transfer, or direct the deposit of any government check relating to a Federal tax liability issued to a client. This prohibits any person subject to Treasury Circular No. 230 from directing or accepting payment from the government to the taxpayer into an account owned or controlled by that person. Treasury Circular No. 230 § 10.31.

Supervisory Responsibilities. If you have or share principal authority and responsibility for overseeing your firm's tax practice, you must take reasonable steps to ensure that your firm has adequate procedures in place to raise awareness and to promote compliance with Circular 230 by your firm's members, associates, and employees. Treasury Circular No. 230 § 10.36.

Best Practices. In addition to the rules with which persons must comply, Treasury Circular No. 230, § 10.33 includes aspirational best practices for those who provide include:

- Communicating clearly with the client regarding the terms of the engagement.
- Establishing facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at conclusions supported by the law and the facts.
- Advising clients regarding the meaning of any conclusions reached by the person subject to Circular 230.
- Advising clients whether they may avoid accuracy-related penalties if the client acts in reliance on that person's advice.

Acting fairly and with integrity in practice before the Internal Revenue Service.

FOOTNOTE

1 All references to the publication called Treasury Circular No. 230 are to the June, 2014 version found at http://www.irs.gov/pub/irs-pdf/pcir230.pdf. The corresponding Regulations are available at 31 CFR Subtitle A, Part 10.

END OF FOOTNOTE

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