

**Presented:**

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Houston, Texas**Circular 230 – Regulation of  
Practice Before IRS****Emily A. Parker**Author contact information:  
Emily A. Parker, Partner  
Thompson & Knight LLP  
1722 Routh Street, Suite 1500  
Dallas, Texas 75201[Emily.Parker@tklaw.com](mailto:Emily.Parker@tklaw.com)  
214-969-1502

## **CIRCULAR 230 – Regulation of Practice Before IRS**

Emily A. Parker, Partner  
Thompson & Knight LLP  
Dallas, Texas

### **1. Who are subject to Circular 230?**

- Applies to “practitioners” - §§10.2 and 10.3
  - Licensed attorneys and CPAs
  - Enrolled agents, enrolled actuaries, and enrolled retirement plan agents
  - Temporary or limited representation
  - Registered tax return preparers – return preparer defined by § 7701(a)(36); Reg. § 301.7701-15 (New)

### **2. What activities are subject to Circular 230?**

- §10.2(4): All matters connected with a presentation to the IRS relating to taxpayer rights, privileges or liabilities, including (without limitation)
  - Preparing documents; filing documents (including returns); corresponding and communicating with the IRS
  - Rendering written advice regarding entity, plan, transaction or other arrangement with potential for tax avoidance or evasion

### **3. Assistance from Disbarred or Suspended Practitioner**

- §10.24 – Practitioner cannot assist, or accept assistance from,
  - Person disbarred or suspended from practice before IRS
  - Former government employee in violation of §10.25 or federal law
  - In matter constituting practice before IRS

### **4. Fees - § 10.27**

- Practitioner may not charge “unconscionable” fee
- Generally, practitioner may not charge a “contingent fee” for services in “any matter before the IRS”
- Exceptions from prohibition of contingent fee:
  - IRS examination of, or challenge to, original return
  - Amended return or claim for refund filed within 120 days of notice of exam of, or challenge to, original return
  - Claim for refund solely of interest or penalties
  - Any judicial proceeding arising under the Code
- “Contingent fee” – fee based on whether or not position (i) avoids challenge by IRS or (ii) is sustained by IRS or courts, including
  - Fee based on % of refund on return, % of taxes saved, or that otherwise depends on specific result obtained
  - Reimbursement of all or portion of fee
- Matter before IRS

- Tax planning and advice
- Preparing or filing or assisting in filing returns or claims
- All matters connected with presentations to and communicating or corresponding with IRS

## 5. § 10.34(a) – Standards for tax returns

- Practitioner may not willfully, recklessly, or through gross negligence
  - Sign return or claim where practitioner knows or reasonably should know that position on return, or
  - Advise client to take position on tax return or claim, or
  - Prepare portion of tax return or claim containing position
  - Where position:
    - Lacks reasonable basis
    - Is unreasonable as defined by § 6694(a)(2), or
    - Is willful attempt to understate liability or reckless or intentional disregard of rules or regulations by practitioner as described in § 6694(b)(2)

## 7. Unreasonable Position Under § 6694(a)(2)

- Except as provided below, position is unreasonable *unless* “substantial authority” exists for the position
- If a position relates to a “tax shelter” or a “reportable transaction” – unreasonable *unless* it is “reasonable to believe more likely than not” would be sustained on merits
- If disclosed pursuant to section 6662, and there is a reasonable basis (excluding tax shelter and reportable transaction)

## 8. Tax Shelter - § 6692(d)(2)(C)(ii)

- Partnership or other entity; any investment plan or arrangement, or any other plan or arrangement
- If “a significant purpose” of such partnership, entity, plan or arrangement
- Is the avoidance or evasion of Federal income tax

## 9. Recent Decisions in OPR cases

- Director, Office of Professional Responsibility
  - v. Luis R. Hernandez, Decision on Appeal (Complaint No. 2010-09)
  - v. Timothy L. Baldwin, Decision on Appeal (Complaint No. 2010-08)
  - v. Edgar H. Gee, Jr., Initial Decision and Order, March 28, 2011 (Complaint No. 2009-31)

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## Title search: Ethics and Professional Responsibility Issues

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[Oil and Gas Tax, Part 2: Current Developments in Tax Administration with IRS Chief Counsel; Ethics and Professional Responsibility with IRS Director of OPR; plus the Latest Techniques and Trends to Resolve an LB&I Audit \(2011\)](#)

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