
Scenarios of Disciplinary Actions From the Office of Director of Practice

The following scenarios are composites of matters that have come to the attention of the Office of Director of Practice. The scenarios are intended to inform tax practitioners of the types of activity that may result in disciplinary action under Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers Before the Internal Revenue Service (a republication of 31 C.F.R. Part 10). Because disciplinary matters are resolved on the basis of their particular facts and circumstances, these scenarios do not constitute precedent in any matter before the Director.

Comments concerning the scenarios should be sent to: Office of Director of Practice, C:AP:P, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224.

False statements. The practitioner was engaged by a physician to prepare the physician's individual income tax return. When the physician delivered his records, he commented to the practitioner that he hoped he could take a substantial deduction for using his car in his practice. The practitioner did not ask for further substantiation and, on the tax return submitted to the IRS, deducted various automobile expenses: depreciation, insurance, maintenance, gas, and oil. When the tax return was audited, the physician explained to the IRS auditor that he considered his car to be used in his practice because he drove it between his home and office.

Thereafter, the Director called the practitioner's attention to possible violations of Circular 230: lack of due diligence in preparing tax returns in violation of section 10.22(a); and giving false information to the Treasury Department

in violation of section 10.51(b). The practitioner asserted that he was entitled to place good faith reliance on his client's information. However, the practitioner could not cite any authoritative exception to the general rule that commuting expenses are not deductible. Consequently, the Director considered the practitioner to be in violation of section 10.51(b).

Contemptuous conduct. The practitioner called an IRS revenue officer to discuss his client's case. The revenue officer, after listening to the practitioner's comments, stated that the client could still expect enforcement action. Whereupon, the practitioner said, "How about my coming down there and jerking you around for a while?" He added he "would not mind kicking down the door." The revenue officer terminated the call and notified IRS' Inspection Service. Later in the day, the practitioner called back to apologize.

The Director contacted the practitioner with regard to possible violations of Circular 230: attempting to influence an IRS employee's official action by use of a threat, a violation of section 10.51(f); and contemptuous conduct consisting of abusive language, a violation of section 10.51(i). In response, the practitioner offered little in the way of explanation, stating that he had simply lost his temper.

The Director determined that the practitioner's statements constituted contemptuous conduct in violation of section 10.51(i). Since this was the only such instance involving the practitioner in many years of IRS practice, and in view of the quick apology, the Director determined that a reprimand, with a warning as to future conduct, was the appropriate sanction.

Due Diligence. The practitioner's employees completed clients' tax returns, which the practitioner reviewed and signed as the preparer. In completing a client's individual income tax return, one of the employees accepted the client's characterization of several trips as business trips. The employee made no further inquiry and did not request substantiation. In fact, no business purpose for the trips could be substantiated. The practitioner reviewed and signed the tax return.

The Director contacted the practitioner, stating that the practitioner may have violated the regulations in Circular 230: lack of due diligence in preparing tax

returns in violation of section 10.22(a); and giving false information to the Treasury Department in violation of section 10.51(b). The practitioner responded that it would be unfair to hold him responsible for the actions of the employee, who had disregarded the office policy of obtaining substantiation for business trips.

In consideration of the practitioner's office policy, and in the absence of a history of inaccurate returns, the Director was satisfied that the practitioner had not knowingly submitted false information. Therefore, the Director resolved in the practitioner's favor any question with regard to a violation of section 10.51(b). However, the practitioner, as the person who signed the tax return, could not disclaim responsibility for the tax return's accuracy. The Director considered the practitioner to be in violation of section 10.22(a) for failing to exercise due diligence.

Knowledge of client's mistake. The client completed the practitioner's tax return preparation questionnaire, indicating that he was separated from his spouse. In reviewing the questionnaire, the practitioner asked the client whether he was "legally separated." The client replied that he was. The practitioner prepared the client's Form 1040, listing the client's filing status as single.

Later, the practitioner learned that although the client and the client's spouse had come to terms on a separation agreement, the agreement had not been incorporated into a decree of divorce or separate maintenance. The practitioner, knowing that the client had declined to file an amended tax return in a prior year, did not inform the client of the mistake.

The Director informed the practitioner that his conduct raised a question regarding violation of section 10.21 of Circular 230, which requires a practitioner who knows that his client has not complied with the Federal revenue laws or has made an error in, or omission from, a tax return or document to advise the client of such noncompliance, error, or omission. The practitioner's assumption that the client would not file an amended tax return did not relieve the practitioner of his duty to advise the client of errors. The practitioner's conduct violated section 10.21, the Director found.