

Part 20. Penalty and Interest

Chapter 1. Penalty Handbook

Section 1. Introduction and Penalty Relief

20.1.1.3.3.2.1 (11-21-2017)

First Time Abate (FTA)

1. IRS provides administrative relief from the following penalties if the qualifying criteria contained in this subsection are met:
 - A. Failure to file (FTF) penalty under IRC 6651(a)(1), IRC 6698(a)(1), or IRC 6699(a)(1),
 - B. Failure to pay (FTP) penalty under IRC 6651(a)(2) and/or IRC 6651(a)(3), and
 - C. Failure to deposit (FTD) penalty under IRC 6656.
2. This administrative waiver, implemented in 2001, is referred to as First Time Abate (FTA) and is available for penalty relief the first time a taxpayer is subject to one or more of the referenced penalties for a single return. When FTA criteria have otherwise been met, do not provide penalty relief under the FTA waiver unless the following are true:
 - A. The taxpayer has filed, or filed a valid extension for, all required returns currently due, AND
 - B. The taxpayer has paid, or arranged to pay, any **tax** currently due.

Note:

Although reported as a tax on Form 1040, this does not include an unpaid Shared Responsibility Payment (SRP) applicable under IRC 5000A(b).

- When determining if the taxpayer has filed, or filed a valid extension for, all returns currently due, consider the taxpayer current with this requirement if the taxpayer states they filed any missing return or extension to file whose due date is 45 days or fewer than the current date. For returns or extensions to file whose due date is more than 45 days from the current date, secure a processable copy of each return and/or extension.

Example:

If considering penalty relief on May 25, 2017 and the taxpayer otherwise meets FTA criteria but we have no record their 2016 Form 1040 nor an extension of time to file has been filed, consider the taxpayer current for the 2016 Form 1040.

- When determining if the taxpayer has paid, or arranged to pay, any tax currently due, consider the taxpayer current with this requirement if he or she has an open installment agreement and is current with his or her installment payments.
3. The Reasonable Cause Assistant (RCA) is programmed to determine if FTA criteria are met. Refer to *IRM 20.1.1.3.6, Reasonable Cause Assistant*, for RCA policy and additional FTA guidelines when RCA is used.

Exception:

RCA is unable to determine if the taxpayer has filed all returns and paid, or arranged to pay, all tax currently due. The account must be reviewed manually to determine if these criteria have been met prior to removing any penalties under the FTA waiver.

4. The following FTA waiver eligibility criteria applies to all taxpayers:

Note:

When determining if FTA criteria are met, the criteria below applies to the same MFT as the penalized MFT unless the penalized MFT is 01, 14, 30, or 31. If the penalized MFT is 01 or 14, the criteria applies to both MFTs 01 AND 14. If the penalized MFT is 30 or 31, the criteria applies to both MFTs 30 AND 31.

- . The tax period ending date is later than Dec. 31, 2000, and
- A. The taxpayer has not been required to file the same return, or no tax modules for the same return are in TDI Status 02, 03, or 04 (IMF), for the 3 years preceding the penalized tax period (see Exception), and
- B. If required to file the same return during the preceding 3 years, has no unreversed penalties (except an estimated tax penalty, TC 17X) ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ and a notice was issued showing the assessed penalty or penalties (a module balance cleared with a TC 606 indicates a notice showing the assessed penalty or penalties **was not** issued), and
- C. If required to file the same return during the preceding 3 years, has no penalties manually suppressed or reversed with Penalty Reason Code (PRC) 018 (*FTA, RCA not used*), 020 (*FTA, RCA used*), or 021 (*Tolerance*). See *Exhibit 20.1.1-2, Penalty Reason Code Chart* (see Exception).

Exception:

If subsequent information shows the taxpayer was either not required to file a return or that they did in fact comply and were not subject to any penalty on a module on which a penalty abatement was input with PRC 018, 020, or 021, consider the taxpayer compliant for that module.

5. When determining if FTA criteria are met for penalties assessed on MFT 30 or 31, the taxpayer(s) must meet FTA criteria on all returns required to be filed as a primary and secondary taxpayer, if applicable.

Example:

If the filing status of the return on the penalized period is Married Filing Joint and the required returns in the preceding 3 years were not filed under the same primary SSN and with the same filing status and same primary and secondary SSNs, FTA criteria for both SSNs must be met.

Example:

If the filing status on the return on the penalized period is other than Married Filing Joint and the taxpayer filed, or was required to file, as a secondary taxpayer during the preceding 3 years, FTA criteria must be met for all returns on which the taxpayer was reported, or was required to be reported, as the secondary taxpayer on a joint return.

6. In addition to the criteria in paragraph (4), FTA criteria will not be met on BMF accounts if any of the following is true:

- . A total of four or more FTD penalty waiver codes are present in the taxpayer's three-year penalty history. Waiver Code 24 is set when the FTD penalty is waived due to a change in deposit frequency. Waiver Code 25 is set when the FTD penalty is waived per IRM 20.1.4.3, *Restrictions on Assessments*, criteria. Waiver codes, if posted, are shown in Command Code (CC) BMFOL definer R with the literal FTD PEN WAIVER CD.

- A. The FTD penalty is charged for EFTPS avoidance. However, if the taxpayer made some deposits electronically by EFTPS as required but not all and all other FTA criterion are met, any portion of an FTD penalty not attributable to EFTPS avoidance can be removed or suppressed. If the portion of the penalty attributable to EFTPS avoidance meets IRM 20.1.4.3, *Restrictions on Assessments*, criteria, remove the penalty in full.
- B. For a Form 1120, *U.S. Corporation Income Tax Return*, or Form 1120-S penalty, a Form 1120-S, *U.S. Income Tax Return for an S Corporation*, in the 3-year look-back period was filed late but not penalized.

Note:

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- C. The penalty is charged for an incomplete Form 1120-S under IRC 6699(a)(2) or Form 1065 under IRC 6698(a)(2). See IRM 20.1.2.5, *Failure to File S Corporation Return-IRC 6699*, and IRM 20.1.2.3, *Failure to File a Partnership Return*. An incomplete return penalty is assessed on MFT 02 or 06 with a TC 246 or a TC 240 without a 3-digit penalty reference number (PRN). Taxpayers that file an incomplete Form 1120-S or Form 1065 are provided an opportunity to submit the missing information before the incomplete return penalty is assessed.
- 7. In addition to the criteria contained in paragraphs (4)-(6), penalty relief under the FTA waiver does not apply to the following:
 - Returns with an event-based filing requirement, generally returns filed once or infrequently such as Form 706, *U.S. Estate Tax Return*, and Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*.
 - The daily delinquency penalty (DDP), see e.g., IRC 6652(c)(2)(A) and IRM 20.1.8, *Employee Plans and Exempt Organization Penalties*.
 - Information reporting that is dependent on another filing, such as various forms that are attached.

Example:

Penalties assessed against a late-or unfiled Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, or Form 5472, *Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business*. See IRM 20.1.9, *International Penalties*.

- This list is not all inclusive.
- 8. FTA is an administrative waiver and does not carry any oral statement authority (OSA) threshold. See IRM 20.1.1.3.1, *Unsigned or Oral Requests for Penalty Relief*, for OSA guidelines.
- 9. As stated in paragraph (2), penalty relief under the FTA waiver only applies to a single tax period. Further, penalty relief under the FTA waiver only applies to a tax period for which the qualifying criteria in paragraphs (4)-(6), as applicable, have been met. In addition, the FTA waiver is not applicable based solely on a taxpayer's first request for penalty relief.

Example:

If a Form 941 filer was compliant for calendar years 2013, 2014, and 2015 but made late deposits and was assessed FTD penalties on all 4 2016 tax periods, FTA criteria can only be met and the

waiver applied to the tax period ended 201603. Reasonable cause criteria must be met for tax periods 201606, 201609, and 201612.

Example:

If the same Form 941 filer was not compliant during calendar year(s) 2013, 2014, and/or 2015 but didn't request penalty relief for those years and their first request for penalty relief is for the 4 FTD penalties on their 2016 returns, penalty relief under the FTA waiver is not appropriate for any of the 2016 penalties.

10. An FTA waiver is not penalty-specific. In other words, if the taxpayer has any unreversed penalties (except an ES penalty) on a module in the 3-year look-back period, or any penalties reversed with PRC 018, 020, or 021, the FTA waiver does not apply to any penalty on the module under consideration.

Example:

If a taxpayer was assessed an FTD penalty and no other penalties on Form 941 for tax period 201703 and a review of the 3-year look-back period shows an unreversed FTP penalty ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ ≡ (and a notice was issued), or the FTP penalty was removed with PRC 018, 020, or 021, the FTA waiver does not apply for 201703 tax module.

11. Per *IRM 20.1.1.3*, penalty relief under Administrative Waivers, including FTA, is to be considered and applied before reasonable cause. If FTA criteria are met, the FTA waiver will be applied before reasonable cause and the taxpayer must be notified that we removed their penalty or penalties based on their prior history of compliance and not based on their reasonable cause statement.

Caution:

Do not provide relief under the FTA waiver if there is clear and convincing evidence that the taxpayer did in fact comply and is not subject to any penalties or if the penalty or penalties is/are the result of an IRS error. Take appropriate corrective actions that will result in systemic reversal of the penalty or penalties. If the module is restricted from removing the penalty or penalties systemically or the penalty or penalties is/are clearly the result of an IRS error then input the penalty abatement transaction(s) with penalty reason code (PRC) 045.

12. When penalty relief under the FTA waiver is granted, notify the taxpayer we have removed the penalty or penalties based on their prior history of compliance and not based on a reasonable cause explanation provided, if applicable. Correspondence Letters 168C, 3502C (RCA only), and 3503C (RCA only), as well as ICS (integrated collection system) macro letters 4722, 4723, and 4724, contain appropriate paragraphs to use for this notification requirement. The following is an example of this paragraph:

Example:

We approved your request to remove the penalties. However, we only granted penalty relief because you have a good history of filing and paying on time. This type of penalty removal is only available one time. We will base our decisions to remove any future penalties on reasonable cause criteria.

Note:

When applicable, include an explanation that educates the taxpayer how to be compliant in the future. Examples of when an explanation may not be applicable include deceased taxpayers and telephone contacts during which an explanation was provided verbally.

13. If the tax is not paid in full on the module that meets FTA criteria and the taxpayer is current with installment agreement payments (and has filed all returns currently due), allow abatement of the FTP penalty under the FTA waiver determined to the current date and use reason code **(RC) 062** with the TC 271. While the FTA waiver is an administrative waiver and not reasonable cause, the **RC 062** will not restrict Master File from continuing to compute the FTP penalty on the unpaid tax and is to be used in this instance only.

Note:

An open paragraph must be used in Correspondex Letters 168C, 3502C, and 3503C to inform the taxpayer that the FTP penalty will continue to apply to the unpaid tax. After the tax is paid in full, the additional FTP penalty can be removed under the FTA waiver.

Caution:

If the tax is paid in full or the taxpayer has agreed to pay the balance owed immediately upon receipt of notice of abatement of the penalty (see IRM 20.1.2.1.4.1(9)), allow abatement or suppression of the assessed amount of FTP penalty (i.e., input TC 270 for \$0.00 if the module only reflects accrued FTP). On IMF modules, use RC 065.

14. Per *IRM 20.1.1.5.1*, a PRC is required when abating an assessed penalty or suppressing a penalty that is otherwise applicable. The FTA waiver carries its own PRCs as follows:
- **PRC 018** - To be used when an independent determination of the taxpayer's eligibility for penalty relief under the FTA waiver is made. This includes situations where RCA is used but RCA did not determine FTA criteria have been met.
 - **PRC 020** - To be used when RCA is used and RCA displays a message indicating the module under review meets FTA criteria. This includes situations where RCA displays a message indicating one or more modules in the 3-year history have been moved to the retention register and manual review of the module(s) moved to the retention register confirms FTA criteria have been met.
15. Taxpayers are not required to specifically request penalty relief under the FTA waiver to be eligible for the waiver. If one or more penalties eligible for relief under the FTA waiver remain after all account discrepancies have been corrected, and/or are being proposed in the course of an examination, abatement or suppression of the penalty or penalties should be made if all FTA criteria have been met.

20.1.1.4 (11-21-2017)

Methods of Appealing Penalties

1. Various administrative and legislative remedies are provided for taxpayers who disagree with the IRS's determination that they are liable for a particular penalty. Generally, when a taxpayer disagrees with our determination regarding a penalty, he or she has the right to an administrative appeal.
2. Taxpayers have the right to challenge the assertion or assessment of a penalty, and generally may do so at any stage in the penalty process. Taxpayers may request the following:
 - A. A review of the penalty prior to assessment (e.g., deficiency procedures),
 - B. A penalty abatement after it is assessed, and either before or after it is paid (post-assessment review), or
 - C. An abatement and refund after payment (claim for refund).

3. Taxpayers may indicate their disagreement with the IRS either verbally or in writing, or if the penalty has already been paid, by filing a claim for refund or credit.
4. If agreement cannot be reached at the area field office or the campus, the taxpayer may request a conference with the employee's immediate manager, or (in most cases) the taxpayer may request that the case be forwarded to Appeals. Taxpayers should provide a written request for consideration by Appeals. Also see *IRM 20.1.1.3.5.1, Subsequent Requests for Penalty Relief*.
5. The taxpayer may also file suit in court. Depending on the procedural circumstances of the taxpayer's case, the taxpayer may petition the United States Tax Court or file a complaint with either the United States District Court or a United States Court of Federal Claims (as appropriate). See *IRM 8.20, Account and Processing Support (APS)*.
6. Also see *IRM 8.11, Penalties Worked in Appeals*.

20.1.1.4.1 (02-22-2008)

The Appeals Function

1. The Appeals Office is an independent administrative body within the IRS that is the only formal internal level of appeal.
2. The review of a penalty determination by Appeals is not automatic. Appeals will only review a penalty if the request for relief has been previously denied by an IRS employee and the taxpayer requests an appeal.
3. In addition, Appeals may make a determination that the taxpayer did not commit the prohibited action or failure to act for which the penalty is asserted (charged). Issues of basic liability for a penalty may be considered in the appeals process, and should be considered before determining if reasonable cause or other relief criteria exist.
4. Appeals has the authority to settle penalties for less than the full amount based on hazards of litigation.

20.1.1.4.1.1 (11-21-2017)

Pre-assessment Appeals

1. Generally, Appeals will consider the appropriateness of the following type of penalties prior to assessment:
 - A. Penalties that are asserted by the IRS in the course of an examination of a taxpayer's income tax return,
 - B. Penalties that are granted a specific pre-assessment appeal right such as the trust fund recovery penalty under IRC 6672 (see *IRM 8.25.1, Trust Fund Recovery Penalty (TFRP), Overview and Authority*) or the preparer penalties under IRC 6694 (see *IRM 8.11.3, Return Preparer Penalty Cases*), and/or
 - C. The intentional disregard penalty of IRC 6721(e) when it is asserted for failures to comply with the cash reporting requirements of IRC 6050I (Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*).
2. Generally, if Appeals considers a penalty before it is assessed, Appeals will not reconsider the same penalty after it is assessed.
 - A. However, at its discretion, Appeals may reconsider its prior decision if evidence becomes available that indicates further consideration is warranted.

- B. Taxpayers may also pay the penalty previously upheld by Appeals and file a claim for refund. The claim for refund may be transferred to Appeals, if denied at the campus level.
- 3. Also see 8.11.1, *Return Related Penalties in Appeals*.

20.1.1.4.1.2 (11-21-2017)

Post-assessment Appeals

- 1. To request abatement of a penalty after assessment, the taxpayer must submit a written request to the IRS.
- 2. The employee must consider all the facts and circumstances to determine if the taxpayer's explanation meets the penalty relief criteria. See *IRM 20.1.1.3, Criteria for Relief From Penalties* and *IRM 20.1.1.3.5.1, Subsequent Requests for Penalty Relief*.
- A. If a taxpayer orally requests the abatement of a penalty, instruct the taxpayer to submit the request in writing. *IRM 20.1.1.3.1*.
- B. If a taxpayer orally requests an appeal of a decision, instruct the taxpayer to submit the request in writing.

20.1.1.4.2 (11-25-2011)

Deficiency Procedures

- 1. IRC 6211 generally defines a deficiency as the excess of the correct amount of income tax, estate tax, or gift tax owed, minus the tax amount shown on the return and amounts previously assessed (or collected without assessment) as a deficiency, plus the amounts of rebates made. In general, deficiency procedures are used when additional income, estate, or gift taxes, and/or related penalties are proposed. The IRS generally can or cannot do the following:
 - A. **Cannot** assess an additional amount of income tax, estate tax, or gift tax, including related penalties, unless it complies with deficiency procedures;
 - B. **Can** assess additional amounts of employment tax and certain excise tax, and related penalties, without providing a notice of deficiency;
 - C. **Can** assess penalties not related to a tax (e.g., IRC 6694, IRC 6695, IRC 6695A, IRC 6700, IRC 6701, IRC 6702, and IRC 6713) without providing a notice of deficiency;
 - D. **Can** assess estimated tax penalties (IRC 6654 and IRC 6655) if a return was filed for the tax year, without providing a notice of deficiency; and
 - E. **Can** assess the failure to file and failure to pay penalties (IRC 6651) applicable to the portion of the tax liability that is not a tax deficiency, without providing a notice of deficiency.

Example:

Taxpayer files the return one month late and reports and pays a tax of \$4,000. During an audit, the IRS determines a tax deficiency of \$1,000. The failure to file penalty (FTF) is 5 percent per month (for up to 5 months) of the amount of tax. The **total** FTF penalty is \$250 (5 percent of \$5,000 for one month). If the taxpayer contests the deficiency, the taxpayer will be entitled to a notice of deficiency for \$1,050 (\$1,000 tax deficiency and \$50 FTF penalty (5 percent of \$1,000)). The remaining \$200 failure to file penalty which was attributable to the original tax assessment is not part of the deficiency and is collectible by immediate assessment.

2. A penalty is subject to deficiency procedures if the related tax underpayment being assessed is subject to deficiency procedures. For example, if the negligence penalty was assessed on an underpayment of income tax, the deficiency procedures would apply to the negligence penalty as well as the income tax deficiency. However, if the penalty was the result of an underpayment of employment tax, deficiency procedures would not apply to the penalty.
 - A. The taxes and related penalties subject to deficiency procedures include income tax, estate tax, gift tax, and certain excise taxes.
 - B. The taxes and related penalties not subject to deficiency procedures include employment taxes imposed by Subtitle C of the IRC, and certain excise taxes.
3. The procedure called "notice of deficiency" provides the taxpayer a method of appealing tax and/or penalties to the United States Tax Court prior to assessment. See IRC 6212.

20.1.1.4.2.1 (11-21-2017)

Non-Deficiency Procedures

1. Most excise taxes are not subject to deficiency procedures. No statutory notice of deficiency is issued and the taxpayer cannot petition the Tax Court.
2. Some employment tax determinations are reviewable by the Tax Court in proceedings to determine employment status under IRC 7436. See IRM 4.23.10.10 for how to determine which issues can be assessed without providing the taxpayer the opportunity to seek Tax Court review. The penalties related to the taxes that are reviewable by the Tax Court also cannot be assessed until a Notice of Determination of Worker Classification (NDWC) has been issued. The penalties related to the taxes which are not subject to Tax Court review can be assessed without the issuance of a NDWC.
3. Generally, procedures for assessing penalties that are not subject to pre-assessment Tax Court review are as follows:

If	And	Then
Penalties are proposed	The taxpayer agrees,	The penalties are assessed.
Penalties are proposed	The taxpayer disagrees,	A 30-day letter is issued and the taxpayer may file a protest with Appeals.
Appeals sustains the penalty proposal,		The penalties are assessed.

4. Note:

5. See *IRM 20.1.1.2.3, Managerial Approval for Penalty Assessments*.
6. If penalties are assessed and the taxpayer cannot or does not file a protest with Appeals, the taxpayer must pay the penalty, then file a claim for credit or refund.
7. If a 30-day letter was not issued, or if a claim for refund was denied, give the taxpayer the opportunity for an appeal.

[Date]

Practitioner, Designation
Address
City, ST Zip Code

Re: Suspected Circular 230 Misconduct

Dear Practitioner:

This letter is being sent pursuant to § 10.53 of Treasury Department Circular No. 230 (31 CFR Subtitle A, Part 10, Rev. June 2014). The text of Circular 230 may be accessed at: <http://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

The Office of Professional Responsibility (OPR) has received information which raises questions as to whether you have violated Subpart [insert subpart(s)], § [insert section(s)] of the *Regulations Governing Practice before the Internal Revenue Service* (Circular 230). A summary of the alleged facts, and of the specific provisions allegedly violated, are outlined below for your reference.

Conduct in Violation of § [insert section(s)]

[Describe violations in separate paragraphs for each Cir 230 section violated- in sufficient detail to put reader on notice of the issues]

Closing of this Investigation

Upon review, OPR has determined that the allegations do not currently warrant further investigation or action by OPR. This letter is being sent to you solely for the purpose of advising you of the allegations, and of our determination not to pursue the matter further at this time. No response is required.

Pursuant to § 10.53(c), the administrative file containing these allegations will be retained by OPR for a period of twenty-five (25) years, required by the applicable records control schedule approved by the National Archives and Records Administration, and as designated in Document 12990, *Records and Information Management Records Control Schedules*. Because the administrative file will be retained and because there is the possibility that the allegations contained in the

administrative file will be viewed as cumulative conduct should any future referrals to OPR occur, you may elect to provide a written response to the allegations. Any written response you provide will be maintained with the administrative file for the period referenced above, but you **will not** receive a response in any form from OPR.

It is important that you understand that the decision not to pursue the allegations against you at this time is based upon the currently known facts and circumstances. However, the conduct alleged, if true, and absent any mitigating factors, does constitute a technical violation of Circular 230 § [insert sections]. Consequently, we urge you to consider the allegations contained in this letter objectively, and take steps to understand their nature and basis, in order to modify your future conduct accordingly.

Should you wish to submit a written response to the allegations, please address it to: [Attorney-Advisor or Paralegal Name], [Attorney-Advisor or Paralegal Specialist], by telephone at (202) XXX-XXXX, by fax at (202) XXX-XXXX, by email (non-secure) at email address@irs.gov, or by correspondence at: Internal Revenue Service, Office of Professional Responsibility, ATTN: [Attorney-Advisor or Paralegal Name], 1111 Constitution Ave., N.W., SE:OPR - Room 7238-IR, Washington, D.C. 20224.

Sincerely,

[Managers Name]
Manager, Legal Analysis Branch
Office of Professional Responsibility

Manager's Initials (Upper Case)/Drafter's Initials (Lower Case)

[Date]

Practitioner, Designation
Address
City, ST Zip Code

Re: Reprimand

Dear Practitioner:

This letter of reprimand is issued under the authority of Treasury Department Circular No. 230 (31 CFR Subtitle A, Part 10, Rev. June 2014). The text of Circular 230 may be accessed at: <http://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

As you know, this office received information that called into question your fitness to practice before the Internal Revenue Service (IRS), specifically whether you violated [\[list applicable subpart and sections of Circular 230 here\]](#). The following facts have been substantiated:

[\[Describe misconduct in reasonable detail here\]](#)

Based on the above, it is the conclusion of this office that your conduct falls well below that of the standards for a competent practitioner under Circular 230. For this misconduct, OPR declines to initiate a proceeding for your censure, suspension, or disbarment from practice before the IRS at this time. Instead, you are hereby **reprimanded** for this misconduct.

Among other things, this reprimand is a warning that you should re-educate yourself regarding the duties and responsibilities attendant with practice before the IRS. These duties and responsibilities are identified in Circular 230. I want to impress upon you the importance of complying with these standards in the future. Any failure to adhere to the provisions of Circular 230 reflects very negatively on your fitness to practice. You can expect any future misconduct reported to OPR to result in a more significant sanction.

Pursuant to § 10.53(c), the administrative file containing these allegations will be retained by OPR for a period of twenty-five (25) years, required by the applicable records control schedule approved by the National Archives and Records

Practitioner, Designation

Month Day Year

Page 2 of 2

Administration, and as designated in Document 12990, *Records and Information Management Records Control Schedules*. Because the administrative file will be retained and because there is the possibility that the allegations contained in the administrative file will be viewed as cumulative conduct should any future referrals to OPR occur, you may elect to provide a written response to the allegations. Any written response you provide will be maintained with the administrative file for the period referenced above, but you **will not** receive a response in any form from OPR.

Should you have any questions, please contact: [\[Attorney-Advisor or Paralegal Name\]](#), [\[Attorney-Advisor or Paralegal Specialist\]](#), by telephone at (202) XXX-XXXX, by fax at (202) XXX-XXXX, by email (non-secure) at email address@irs.gov, or by correspondence at: Internal Revenue Service, Office of Professional Responsibility, ATTN: [\[Attorney-Advisor or Paralegal Name\]](#), 1111 Constitution Ave., N.W., SE:OPR - Room 7238-IR, Washington, D.C. 20224.

This letter of reprimand constitutes a final disposition only with respect to the facts described above.

Sincerely,

Karen L. Hawkins
Director
Office of Professional Responsibility

[KLH/initials](#)

Agreement for Consent to [Suspension/Disbarment] from Practice before the Internal Revenue Service

Parties to the Agreement

[Practitioner] (hereafter “Practitioner”) and the Office of Professional Responsibility (hereafter “OPR”), Internal Revenue Service (hereafter “IRS”) agree to the following terms and conditions. Unless stated otherwise, “Circular 230,” as used herein, means Treasury Department Circular No. 230 (Rev. 6-2014), a pamphlet reprint of the regulations governing practice before the IRS, which are set out at 31 C.F.R. Part 10.

Practitioner’s Offer of Consent to [Suspension/Disbarment]

Pursuant to section 10.61(b) of Circular 230, subject to the terms of this Agreement and OPR’s acceptance of this Agreement, Practitioner hereby offers to consent to [suspension/disbarment] from practice before the IRS in lieu of a disciplinary proceeding being instituted or continued.

Practitioner’s Admission of Violations

By letter dated [date], receipt of which the Practitioner acknowledges, OPR alleged that Practitioner had violated certain sections of Circular 230. Practitioner hereby admits to the following violations of Circular 230:

[List/Describe Violations]

Term of [Suspension/Disbarment]

Beginning with the effective date of [suspension/disbarment], Practitioner will be indefinitely [suspended/disbarred]. While [suspended/disbarred], Practitioner will be ineligible to “practice before the IRS” as that term is defined in section 10.2 of Circular 230 (including any revision thereto occurring during the [suspension/disbarment]). After a minimum term of [insert term], Practitioner may petition for reinstatement as set forth below.

Effective Date of [Suspension/Disbarment]

The effective date of [suspension/disbarment] is the date that this Agreement is signed by the Director of OPR.

Petition for Reinstatement

No sooner than sixty (60) days prior to the expiration of the minimum term of [suspension/disbarment], Practitioner may file a petition for reinstatement to practice before the IRS. OPR will generally grant the petition provided that Practitioner has satisfied all conditions for reinstatement as stated in this Agreement. Practitioner’s

petition must refer to this Agreement, must truthfully state that Practitioner has satisfied all conditions for reinstatement, and must have attached to it documentary evidence that Practitioner is otherwise eligible to practice before the IRS.

Practitioner's Conditions for Reinstatement

a. Practitioner will file any overdue Federal tax returns and pay, or make arrangements with the IRS to pay, any outstanding Federal tax liabilities, including civil penalties;

b. While [\[suspended/disbarred\]](#), Practitioner will timely file any Federal returns that become due and pay, or make arrangements with the IRS to pay, any Federal tax liabilities that become due;

c. While [\[suspended/disbarred\]](#), Practitioner will not practice before the IRS or make any attempt to do so. Practitioner acknowledges receipt from OPR of *Guidance on Restrictions during Suspension or Disbarment from Practice before the Internal Revenue Service- February 12, 2014*;

d. While [\[suspended/disbarred\]](#), Practitioner will otherwise comply with the regulations in Circular 230;

e. At the time Practitioner petitions for reinstatement, there have been no substantial allegations of misconduct on Practitioner's part reported to OPR; and

f. At the time Practitioner petitions for reinstatement, Practitioner must be otherwise eligible to practice before the IRS, including any continuing education requirements.

[\[List any other customized terms relevant to Practitioner's admitted misconduct.\]](#)

Practitioner's Consent to Disclosure of Return Information

Pursuant to 26 U.S.C. § 6103(c), Practitioner consents to the disclosure, by the IRS, of any of Practitioner's return information contained in this Agreement to the persons, authorities, agencies, organizations, or associations listed below. Return information includes any violation of Circular 230 to which Practitioner has admitted in this Agreement that indicates the existence, or possible existence, of Practitioner's liability under the Internal Revenue Code for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

[Should the Practitioner's OPR settlement include a Press Release:](#)

Practitioner's Acknowledgement of Press Release

[Practitioner acknowledges that disclosures permitted pursuant to this Agreement or pursuant to the Privacy Act will include the IRS' issuance of a press release describing Practitioner's admission of violations. Practitioner further acknowledges that he has](#)

reviewed the draft press release, and Practitioner agrees that it is factually accurate and fairly expressed.

List of Persons, Authorities and Agencies to Which Disclosures Will be Made:

The general public, which will include: publication in the Internal Revenue Bulletin of a notice of Practitioner's [suspension/disbarment] and the violations of Circular 230 to which Practitioner has admitted in this Agreement; and OPR's responses to inquiries from the general public concerning Practitioner's disciplinary status.

If OPR intends to disclose the Agreement to the Practitioner's state licensing authorities then include:

Authorities, agencies, or organizations that have granted Practitioner a license to practice law or accountancy, practice before any public authority, or prepare tax returns including the [XXXX State Bar Association / YYYY Board of Accountancy].

No Limitation on OPR's Disclosures Pursuant to the Privacy Act

Neither Practitioner's consent to OPR's disclosure of Practitioner's return information, nor any other provision of this Agreement, limits OPR's authority to disclose, pursuant to routine uses established under the Privacy Act, records and information, including copies of this Agreement, concerning Practitioner's [suspension/disbarment] and the violations to which Practitioner has admitted in this Agreement. Practitioner understands the authority for OPR's disclosure of such records and information is found in the Privacy Act system of records designated as "Treasury/IRS 37.007, Practitioner Disciplinary Records."

Limitation on Admissibility of Practitioner's Admissions

The admissions above under Practitioner's Admission of Violations are conditional and apply only upon this Agreement being signed by both the Practitioner and OPR. If not so signed, at the option of Practitioner, such admissions shall be inadmissible in all future proceedings.

[Practitioner Name]

Date:

Notice address:

[Practitioner Mailing Address inserted by OPR]

Office of Professional Responsibility

By:

Karen L. Hawkins, Director, OPR

Date:

[Date]

Name
Address
City, ST Zip Code

Re: Cease and Desist and Notice of Intent to Limit Power-of-Attorney Privileges

Dear [Name]:

The Office of Professional Responsibility (OPR) administers the regulations governing practice before the Internal Revenue Service (IRS) in 31 CFR Subtitle A, Part 10 (Rev. June 2014), commonly known as Treasury Department Circular No. 230, available at <http://www.irs.gov/pub/irs-pdf/pcir230.pdf>. Circular 230 specifies who may represent taxpayers and otherwise practice before the IRS. Under Circular 230, only authorized individuals may represent a taxpayer and must declare in writing their authorized status before acting as a representative. It has come to OPR's attention that on [date(s)] you filed with the IRS signed Forms 2848, *Power of Attorney and Declaration of Representative*, on which you declared under penalty of perjury that you are a [designation--e.g., attorney, CPA]. According to [state bar, state board, other information], however, you are not _____.

You therefore misrepresented your status on the Forms 2848.

Section 10.3 of Circular 230 specifies "Who may practice." For an individual to practice before the IRS under section 10.3[(a), (b)] of Circular 230, the individual must be currently licensed as a/an [attorney, CPA]. Section 10.2(a) [(1) defines an "attorney" as "a member in good standing of the bar of the highest court of any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia." (2) defines a "certified public accountant" as a person "duly qualified to practice" as a CPA "in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia."] "Practice" before the IRS is broadly defined in section 10.2(a)(4) as "all matters connected with a presentation to the Internal Revenue Service . . . relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by" the IRS, and includes both submission of a Form 2848 to the IRS and representation of a

taxpayer before any IRS officer or employee. Additional information on the definition of “practice” is contained in Publication 947, *Practice Before the IRS and Power of Attorney*, available at: <http://www.irs.gov/pub/irs-pdf/p947.pdf>.

Based on OPR’s inquiry into the facts, you are not a/an [designation--attorney, CPA]. Consequently, you are not eligible to represent any taxpayer before the IRS in the capacity of a/an [designation--attorney, CPA]. **You must cease submitting Forms 2848 on which you falsely declare that you are [a licensed attorney in good standing, a duly qualified CPA] in the State of _____.**

OPR will retain any evidence received that indicates any additional attempts by you to practice. This information will also be considered an aggravating factor in connection with any future referrals of misconduct received in OPR. Any further attempts to engage in unauthorized practice may result in action to remove any limited-practice privileges you may have as an unlicensed, unenrolled individual, or result in a referral to the Treasury Inspector General for Tax Administration or the Department of Justice for further action.

OPR will notify the IRS Centralized Authorization File (CAF) Unit, which processes all powers of attorney, that you are ineligible to represent taxpayers in the capacity of a/an [designation—attorney, CPA]. If you disagree with this Office’s determination that you are not currently licensed as a/an [designation—attorney, CPA], or if you hold another professional license or credential as described in section 10.3 of Circular 230, please contact us **within 10 days of the date of this letter**. If you do not respond within the 10-day period, or OPR determines that there is no basis for staying action notwithstanding any timely response submitted, we will notify the CAF Unit that you are ineligible for representation as [designation—attorney, CPA].

CAF notification will not restrict you from potentially engaging in limited practice before the IRS as an unlicensed, unenrolled tax return preparer, if applicable. Under Revenue Procedure 81-38 and Notice 2011-6, a paid tax return preparer who is not licensed as an attorney or CPA and is not an enrolled agent or other enrolled practitioner may represent a taxpayer during an IRS examination if the return preparer prepared and signed the taxpayer’s tax return or claim for refund as the preparer for the taxable year or other period under examination. An unlicensed, unenrolled return preparer may only appear before revenue agents, customer service personnel, and similar officers and employees of the IRS (including the Taxpayer Advocate Service). An unlicensed, unenrolled return preparer may not represent a taxpayer in any matter other than an examination or before appeals officers, revenue officers, Chief Counsel personnel, or similar officers or employees. Further, Rev. Proc. 81-38 describes individuals who are ineligible for limited practice as an unlicensed, unenrolled return preparer.

Name
Month Day Year
Page 3 of 3

If you have any questions or concerns, or to respond to this letter, contact [Analyst, Attorney-Advisor, or Paralegal Name], [Analyst, Attorney-Advisor, or Paralegal Specialist], by telephone at (202) XXX-XXXX, by fax at (202) XXX-XXXX, by email (non-secure) at email address@irs.gov, or by correspondence at: Internal Revenue Service, Office of Professional Responsibility, ATTN: [Analyst, Attorney-Advisor or Paralegal Name], 1111 Constitution Ave., N.W., SE:OPR - Room 7238-IR, Washington, D.C. 20224.

Sincerely,

Manager Name
Manager, Legal Analysis Branch
Office of Professional Responsibility

Managers Initials / Employees Initials

Internal Revenue Service
Office of Professional Responsibility

Guidance on Restrictions During Suspension or Disbarment
from Practice Before the Internal Revenue Service
February 12, 2014

The Office of Professional Responsibility (OPR) enforces the regulations governing practice before the IRS. These regulations are set out at 31 C.F.R. Subtitle A, Part 10, and are available in pamphlet form as Treasury Department Circular No. 230.

Under section 10.79 of Circular 230, an individual is not permitted to practice before the IRS during the period of time imposed for suspension or disbarment in the Final Agency Decision (“FAD”). A FAD can occur at one of three points: 1) by negotiated consent between the individual and OPR; 2) 30 days after issuance of an Initial Decision and Order by an ALJ which is not appealed by either party; or 3) immediately upon release of a FAD by the Appellate Authority for the IRS. In addition, an individual who is indefinitely suspended pursuant to the Expedited Suspension Procedures contained in section 10.82 is precluded from practicing before the IRS.

Section 10.2(a)(4) states that “Practice before the Internal Revenue Service

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. Such presentations include, but are not limited to, preparing 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.”

The following Guidance is for individuals who are under suspension or disbarment from practice to inform them of specific restrictions these sanctions impose upon their future professional conduct and upon the conduct of others with whom they may deal.

OPR considers an individual's practice, or attempt to practice, while suspended or disbarred as an aggravating factor to be weighed in deciding the individual's reinstatement to practice at a future time. In addition, in evaluating an individual's eligibility for reinstatement to practice, OPR will consider the degree to which the individual has complied with the terms of the consent to suspension or disbarment and the degree to which, during the suspension or disbarment, the individual has complied with the rules of conduct in Circular 230.

A SUSPENDED OR DISBARRED INDIVIDUAL MAY NOT—

1. Prepare or file documents or correspond or communicate with the IRS.

The restriction applies regardless of whether the individual signs the document or correspondence and regardless of whether the individual personally files, or directs another person to file, documents or correspondence with the IRS. The prohibition applies to all means of communication, including person-to-person conversations, faxes, e-mails, other written materials, and telephone calls. The restriction generally does not apply to merely preparing tax returns, except as set forth in an injunction, FAD, Decision on Expedited Suspension, or by Consent.

2. Render written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion.

This prohibition applies regardless of whether the written advice is a part of a larger document or a component of a set of documents and regardless of whether the individual signs the written advice. The written advice need not be intended for submission to the IRS, so long as the written advice serves as a basis for a position taken on a return or any other document that is submitted to the IRS.

3. Represent a client before the IRS at conferences, hearings, and meetings.

This prohibition applies to all forms of conferences, hearings, and meetings, including those conducted person-to-person or by telephone or by teleconferencing facilities. The prohibition bars the individual from *representing* the taxpayer, that is, from advocating, disputing, arguing, or otherwise negotiating on the taxpayer's behalf with respect to the taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS, including provisions outside Title 26 that the IRS is authorized to administer (e.g., foreign bank account reporting under title 31 of the U.S. Code; certain provisions of the Affordable Care Act).

This prohibition applies regardless of whether the taxpayer is a paying client and also applies to all of the limited forms of practice defined in section 10.7(c) of Circular 230. This prohibition does not affect a taxpayer's right to the services of the individual as a witness or any right of the taxpayer to be accompanied by the individual to conferences, hearings, or meetings. However, OPR will consider any instances of the individual's advocating or negotiating on the taxpayer's behalf at conferences, hearings, or meetings, to be attempted practice in violation of the individual's suspended or disbarred status.

4. Execute waivers, consents, or closing agreements; receive a taxpayer's refund check; or sign a tax return on behalf of a taxpayer.

Because these acts require the filing of a power of attorney authorizing the representative to perform these acts, they are considered to be practice before the IRS and are prohibited during periods of suspension or disbarment.

5. File powers of attorney with the IRS.

OPR considers submission of a power of attorney attempting to appoint as a representative an individual who is under suspension or disbarment to be an attempt to practice in violation of the individual's suspended or disbarred status. An individual who seeks to practice before the IRS as a taxpayer's designated representative must declare (usually on Form 2848, *Power of Attorney and Declaration of Representative*) that the representative is not under suspension or disbarment from practice before the IRS. OPR refers false declarations made in powers of attorney to the Treasury Inspector General for Tax Administration for criminal investigation.

6. Assist another person (or offer assistance) if the assistance relates to a matter constituting practice before the IRS, or enlist another person for the purpose of aiding and abetting a suspended or disbarred individual's practice before the IRS.

Sections 10.24(a) and 10.51(a)(11) of Circular 230 prohibit individuals who are eligible to practice before the IRS from knowingly accepting assistance from, or assisting, or aiding or abetting a suspended or disbarred individual in matters constituting practice. OPR will consider both a suspended or disbarred individual's and any other individual's or employer's participation in such relationships to be separate violations of sections 10.24(a) and 10.51(a)(11), and evidence of disreputable conduct under section 10.51(a).

7. State or imply that he or she is eligible to practice before the IRS.

OPR considers express or implied statements of practice eligibility by a suspended or disbarred individual made to a client, a prospective client, or in any other context intended to solicit business, to be false, misleading, or deceptive, and to constitute a violation of section 10.30 of Circular 230. In addition, under section 10.6(j)(4) of Circular 230, individuals may not use the terms enrolled agent, or enrolled retirement plan agent, the designation "EA," or "ERPA," or other form of reference indicating eligibility to practice before the IRS while disbarred or suspended. These prohibitions apply to, among other things, business cards, business stationary, and any on-line presence, including web sites.

SUBJECT TO THE RULES OF CONDUCT CONTAINED IN CIRCULAR 230, A SUSPENDED OR DISBARRED INDIVIDUAL MAY —

1. Generally prepare tax returns.

Subject to exceptions stated in this paragraph, a suspended or disbarred individual generally may prepare, or assist in preparing, for compensation all or substantially all of

a tax return for a taxpayer. The individual may also sign a tax return as the preparer. An individual may **not**, however, do any of the following:

- Prepare, or assist in preparing, for compensation other documents pertaining to a taxpayer's tax liability for submission to the IRS.
- Prepare, or assist in preparing, for compensation a tax return or claim for refund when the individual is enjoined from doing so in accordance with an injunctive order or when the activities are prohibited in a FAD, Decision on Expedited Suspension, or by Consent.
- Represent taxpayers before the IRS in any capacity. This prohibition includes representation before the Examination Division, the Taxpayer Advocate Service, or IRS Customer Service with respect to a tax return the suspended or disbarred individual prepared or signed as the preparer. See restriction number 3 above (in the preceding section of this guidance) entitled, "Represent a client at conferences, hearings, and meetings," for a full description of the loss of limited practice rights while suspended or disbarred from practice.

2. Represent himself or herself with respect to any matter.

Authorized under section 10.7(a) of Circular 230.

3. Appear before the IRS as a trustee, receiver, guardian, administrator, executor, or other fiduciary if duly qualified/authorized as such under the law of the relevant jurisdiction.

Authorized under section 10.7(e). Fiduciaries should file Form 56, *Notice Concerning Fiduciary Relationship*.

4. Appear as a witness for the taxpayer.

Authorized under section 10.8(b) of Circular 230 and Revenue Procedure 68-29, 1968-2 C.B. 913, reprinted in pamphlet form as Publication 499. A witness is limited to providing factual information. He or she may not advocate particular positions on issues arising during a tax controversy matter.

5. Furnish information at the request of the IRS or any of its officers or employees.

Authorized under section 10.8(b).

6. Receive information concerning a taxpayer from the IRS pursuant to a valid tax information authorization.

A suspended or disbarred individual's designation on Form 8821, *Tax Information Authorization*, entitles him or her to receive taxpayer information but does not entitle him or her to practice before the IRS on behalf of that taxpayer.

7. Participate in the Statutory and Regulatory Rulemaking Process.

Authorized under section 10.7(b).

Effective: February 12, 2014

Summary of Penalties: Return Preparation Related Penalties

- **IRC § 6694 – Understatement of taxpayer’s liability by tax return preparer.**
- IRC § 6694(a) – Understatement due to unreasonable positions. The penalty is the greater of \$1,000 or 50% of the income derived by the tax return preparer with respect to the return or claim for refund.
- IRC § 6694(b) – Understatement due to willful or reckless conduct. The penalty is the greater of \$5,000 or 50% of the income derived by the tax return preparer with respect to the return or claim for refund.

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Summary of Penalties: Return Related Penalties

- **IRC § 6695 – Other assessable penalties with respect to the preparation of tax returns for other persons.**
- **IRC § 6695(a) – Failure to furnish copy to taxpayer.** The penalty is \$50 for each failure to comply with IRC § 6107 regarding furnishing a copy of a return or claim to a taxpayer. The maximum penalty imposed on any tax return preparer shall not exceed \$25,000 in a calendar year.
- **IRC § 6695(b) – Failure to sign return.** The penalty is \$50 for each failure to sign a return or claim for refund as required by regulations. The maximum penalty imposed on any tax return preparer shall not exceed \$25,000 in a calendar year.
- **IRC § 6695(c) – Failure to furnish identifying number.** The penalty is \$50 for each failure to comply with IRC § 6109(a)(4) regarding furnishing an identifying number on a return or claim. The maximum penalty imposed on any tax return preparer shall not exceed \$25,000 in a calendar year.
- **IRC § 6695(d) – Failure to retain copy or list.** The penalty is \$50 for each failure to comply with IRC § 6107(b) regarding retaining a copy or list of a return or claim. The maximum penalty imposed on any tax return preparer shall not exceed \$25,000 in a return period.

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Summary of Penalties: Return Related Penalties

- IRC § 6695(e) – Failure to file correct information returns. The penalty is \$50 for each failure to comply with IRC § 6060. The maximum penalty imposed on any tax return preparer shall not exceed \$25,000 in a return period.
- IRC § 6695(f) – Negotiation of check. The penalty is \$500 for a tax return preparer who endorses or negotiates any check made in respect of taxes imposed by Title 26 which is issued to a taxpayer.
- IRC § 6695(g) – Failure to be diligent in determining eligibility for earned income credit. The penalty is \$500 for each failure to comply with the EIC due diligence requirements imposed in regulations.
- **IRC § 6713 – Disclosure or use of information by preparers of returns.**
The penalty is \$250 for each unauthorized disclosure or use of information furnished for, or in connection with, the preparation of a return. The maximum penalty on any person shall not exceed \$10,000 in a calendar year.

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Summary of Penalties: Abusive Tax Shelters

- **IRC § 6700 – Promoting abusive tax shelters**

The penalty is for a promoter of an abusive tax shelter and is generally equal to \$1,000 for each organization or sale of an abusive plan or arrangement (or, if lesser, 100 percent of the income derived from the activity).

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Summary of Penalties: Abusive Tax Shelters

IRC § 6701 – Penalties for aiding and abetting understatement of tax liability.

The penalty is \$1000 (\$10,000 if the conduct relates to a corporation's tax return) for aiding and abetting in an understatement of a tax liability. Any person subject to the penalty shall be penalized only once for documents relating to the same taxpayer for a single tax period or event.

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Summary of Penalties: Criminal Penalties

- **IRC § 7206 – Fraud and false statements.**

Guilty of a felony and, upon conviction, a fine of not more than \$100,000 (\$500,000 in the case of a corporation), imprisonment of not more than three years, or both (together with the costs of prosecution).

- **IRC § 7207 – Fraudulent returns, statements, or other documents.**

Guilty of a misdemeanor and, upon conviction, a fine of not more than \$10,000 (\$50,000 in the case of a corporation), imprisonment of not more than one year, or both.

- **IRC § 7216 – Disclosure or use of information by preparers of returns.**

Guilty of a misdemeanor for knowingly or recklessly disclosing information furnished in connection with a tax return or using such information for any purpose other than preparing or assisting in the preparation of such return. Upon conviction, a fine of not more than \$1,000, imprisonment for not more than 1 year, or both (together with the costs of prosecution).

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Summary of Penalties: Injunctive Relief

- **IRC § 7407 – Action to enjoin tax return preparers.**

A federal district court may enjoin a tax return preparer from engaging in certain proscribed conduct, or in extreme cases, from continuing to act as a tax return preparer altogether.

- **IRC § 7408 – Action to enjoin specified conduct related to tax shelters and reportable transactions**

A federal district court may enjoin a person from engaging in certain proscribed conduct (including any action, or failure to take action, which is in violation of Circular 230).

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