

Dated: December 22, 2003.

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Director, Office on Violence Against Women.

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DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 10

[REG-122379-02]

RIN 1545-BA70

Regulations Governing Practice Before the Internal Revenue Service

AGENCY: Office of the Secretary, Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This notice proposes modifications of the regulations governing practice before the Internal Revenue Service (Circular 230). These regulations affect individuals who are eligible to practice before the IRS. The proposed modifications set forth best practices for tax advisors providing advice to taxpayers relating to Federal tax issues or submissions to the IRS and modify the standards for certain tax shelter opinions. This document also provides notice of a public hearing regarding the proposed regulations.

DATES: *Comments:* Written or electronically generated comments must be received by February 13, 2004.

Public Hearing: Outlines of topics to be discussed at the public hearing scheduled for February 18, 2004, in the Auditorium of the Internal Revenue Building at 1111 Constitution Avenue, NW., Washington, DC 20224, must be received by February 11, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-122379-02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-122379-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at: www.irs.gov/regs.

FOR FURTHER INFORMATION CONTACT: Concerning issues for comment, Heather L. Dostaler or Bridget E. Tombul at (202) 622-4940; concerning submissions of comments, Guy Traynor of the Publications and Regulations Branch at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by March 1, 2004. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the Office of Professional Responsibility, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proper collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information (disclosure requirements) in these proposed regulations are in § 10.35(d). Section 10.35(d) requires a practitioner providing a tax shelter opinion to make certain disclosures in the beginning of marketed tax shelter opinions, limited scope opinions and opinions that fail to conclude at a confidence level of at least more likely than not. In addition, certain relationships between the practitioner and a person promoting or marketing a tax shelter must be disclosed. A practitioner may be required to make one or more disclosure at the beginning of an opinion. The collection of this material helps to ensure that taxpayers who receive a tax shelter opinion are informed of any facts or circumstances that might limit the taxpayer's use of the opinion. The collection of information is mandatory.

Estimated total annual disclosure burden is 13,333 hours.

Estimated annual burden per disclosing practitioner varies from 5 to 10 minutes, depending on individual circumstances, with an estimated average of 8 minutes.

Estimated number of disclosing practitioners is 100,000.

Estimated annual frequency of responses is on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Internal Revenue Code.

Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Treasury Department. The Secretary has published the regulations in Circular 230 (31 CFR part 10). On February 23, 1984, the regulations were amended to provide standards for tax shelter opinions (49 FR 6719). On May 5, 2000, an advance notice of proposed rulemaking was published (65 FR 30375) which requested comments regarding amendments to the standards of practice governing tax shelters and other general matters. On January 12, 2001, a notice of proposed rulemaking (66 FR 3276) was published that proposed amendments to the regulations relating to practice before the Internal Revenue Service in general and addressing tax shelter opinions in particular. On July 26, 2002, final regulations (67 FR 48760) were issued incorporating only the non-tax shelter related matters. The IRS and the Treasury Department announced that regulations governing standards for tax shelter opinions would be proposed again at a later date.

This document proposes new proposed amendments to the standards governing tax shelter opinions and withdraws proposed amendments to §§ 10.33, 10.35 and 10.36 of the regulations governing practice before the IRS that were published in 2001. See 66 FR 3276 (Jan. 12, 2001).

Explanation of Provisions

Tax advisors play an increasingly important role in the Federal tax system, which is founded on principles of voluntary compliance. The tax system is