July 11, 2011

Hon. Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Comments on Final Circular 230 Regulations

Dear Commissioner Shulman:

Enclosed are comments on final Circular 230 regulations. These comments represent the views of the American Bar Association Section of Taxation. They have not been approved by the Board of Governors or the House of Delegates of the American Bar Association, and should not be construed as representing the policy of the American Bar Association.

Sincerely,

[Signature]

Charles H. Egerton
Chair, Section of Taxation

Enclosure

cc: Emily McMahon, Deputy Assistant Secretary (Tax Policy), Department of the Treasury
William Wilkins, Chief Counsel, Internal Revenue Service
Karen Hawkins, Director, Office of Professional Responsibility, Internal Revenue Service
Deborah Butler, Associate Chief Counsel, Internal Revenue Service
ABA Section of Taxation Comments on Final Circular 230 Regulations

These comments ("Comments") are submitted on behalf of the American Bar Association Section of Taxation and have not been approved by the House of Delegates or Board of Governors of the American Bar Association. Accordingly, these Comments should not be construed as representing the position of the American Bar Association.

Principal responsibility for preparing these Comments was exercised by Diana Erbsen and Larry Campagna of the Standards of Tax Practice, Civil and Criminal Tax Penalties and Administrative Practice Committees of the Section of Taxation. Substantive contributions were made by Linda Beale and Kevin Johnson. These Comments were reviewed by Committee Chairs Scott Michel, Fred Murray and Charles Rettig. These Comments were further reviewed by Chad Muller of the Section’s Committee on Government Submissions, and by Miriam Fisher and Thomas Callahan, Council Directors for the Standards of Tax Practice, Civil and Criminal Tax Penalties and Administrative Practice Committees.

Although the members of the Section of Taxation who participated in preparing these Comments have clients who might be affected by the Federal tax principles addressed by these Comments, no such member (or the firm or organization to which such member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these Comments.

Contact: Chad Muller
direct dial (210) 507-6505
e-mail: chad.muller@chamberlainlaw.com

Date: July 11, 2011
ABA Section of Taxation Comments on Final Circular 230 Regulations

The Tax Section submitted comments to the proposed amendments to Circular 230 on December 7, 2010.\(^1\) We appreciate the consideration of those comments. The final Regulations were issued on May 31, 2011.\(^2\) The final Regulations included significant changes with regard to which there was no opportunity to comment. We believe that some of the changes may have unintended negative consequences. Specifically, the removal of references to the Office of Professional Responsibility (“OPR”) is of concern. Reasons for the removal are set forth in the preamble (“Preamble”) accompanying the final Regulations under the heading “IRS Offices Administering and Enforcing Circular 230.”\(^3\) According to the Preamble, “The final regulations allow the flexibility to adjust responsibility appropriately between the offices as the return preparer initiative is implemented. The Commissioner may delegate necessary authorities to appropriate offices.”\(^4\)

We recognize the need to coordinate the responsibilities of OPR with the new Return Preparer Office (“RPO”) established in connection with the return preparer initiative. We also recognize the need for appropriate mechanisms to ensure that those practitioners newly subject to Circular 230 satisfy the ethical standards set forth therein and have an opportunity for adjudication of any complaint against them. We respectfully submit, however, that removing references to OPR in sections 10.60 and 10.62 of Circular 230 raises substantial concerns as to who will be responsible for disciplinary proceedings. In each instance in which references to OPR have been removed in the final Regulations, the Commissioner theoretically would have discretion to delegate the duties to an Internal Revenue Service (“Service”) representative not associated with OPR.

Circular 230, Subpart D sets forth the process by which complaints are adjudicated. Prior to the final Regulations, the Director of Practice was authorized to initiate a complaint against a practitioner pursuant to sections 10.60 and 10.62 of Circular 230. The final Regulations, however, provide that a complaint must simply “be signed by an authorized representative.” Thus, prior to the final Regulations, Circular 230 disciplinary actions were addressed by OPR, and would not be administered by the same personnel and offices enforcing Title 26. The prospect of disciplinary power being exercised by the same offices that address enforcement of Title 26 raises concerns both about independence of those exercising the disciplinary power and about the ability of practitioners to advocate zealously on behalf of their clients when interacting with Service representatives. The potential for actual or apparent conflicts of interest on both sides is substantial.

As acknowledged in the Preamble, OPR “is central to the IRS’ goal of maintaining high standards of ethical conduct for all practitioners and [OPR] must operate independently from IRS

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4 Id.
functions enforcing Title 26 requirements.” For many years, tax practitioners have relied on the independence and care exercised by OPR in handling discipline of all practitioners authorized to practice before the Service before the advent of the new return preparer registration process. In order to ensure both the actual and perceived integrity and independence of the disciplinary process, we respectfully recommend that the Service delegate authority to OPR to exercise all disciplinary authority under the final Regulations. We specifically recommend that disciplinary authority not be shifted to the new RPO or to any other office within the Service.

\[\text{\textsuperscript{5} Id.}\]