

## IRS Circular 230: An Update

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Virginia Accounting & Auditing Conference

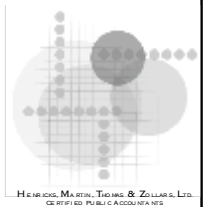
September 26, 2005



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## Today's Presentation

- Brief Katrina Bill Summary
- Circular 230 – How it Impacts the CPA
- Subpart B Recent Changes
  - Significant changes
  - Application to various parts of practice
- Subpart C
- Other Circular 230 Issues



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## Katrina Emergency Tax Relief Act HR 3768

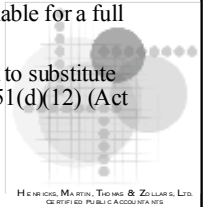
- Signed into law on Friday
- Provides a number of benefits to taxpayers directly in the Katrina area
- But also provides some that can impact taxpayers outside the area



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## Katrina Emergency Tax Relief Act HR 3768

- Benefits of General Application
  - Katrina Employees eligible for Work Opportunity Credit
    - 40% of wages paid in the first year to each employee, limited to first \$6,000 of wages (§51(a),(b))
    - Applies nationwide for hires from August 28 to December 31, 2005 (in disaster area is available for a full two year period) (Act §201(a))
    - “Reasonable identification” will be allowed to substitute for certification otherwise required under §51(d)(12) (Act §201(c))



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## Katrina Emergency Tax Relief Act HR 3768

- Benefits of General Application
  - Katrina Employees eligible for Work Opportunity Credit
    - Hurricane Katrina Employee is someone who had a principal place of abode in the core disaster area on August 28, 2005 and is hired during the appropriate period (depending on whether hired in the disaster area or outside it)
  - Charitable contribution limits raised (Act §301)
    - Individuals—no 50% limit or AGI phase out on qualified contributions

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## Katrina Emergency Tax Relief Act HR 3768

- Benefits of General Application
  - Charitable contribution limits raised
    - Corporations—no 50% limit or AGI phase out on qualified contributions
    - Qualified contributions
      - Paid in cash between August 25, 2005 and December 31, 2005 (Act §301(d)(1)(A))
      - For a corporation only must be paid towards Katrina relief effort (Act §301(d)(1)(B))
      - Taxpayer elects to make use of this provision
      - Does not include payments to certain segregated funds or accounts if taxpayer retains direct or indirect control (Act §301(d)(2))

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## Katrina Emergency Tax Relief Act HR 3768

- Benefits of General Application
  - Charitable contribution limits raised
    - Elections made separately for members of partnerships and S corporations (Act §301(d)(3))
  - Charitable mileage raised from 14¢ a mile to 70% of standard business rate for mileage after August 25, 2005 through December 31, 2005 rounded to next highest cent (34¢ is what I compute)
  - Special rules for donations of food and books

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## Katrina Emergency Tax Relief Act HR 3768

- Victims Directed Provisions
  - If have clients in affected area, study the bill
  - Liberalized qualified plan loan and distribution rules
  - Spread of period of inclusion in tax for distributions related to Katrina economic loss
  - 3 year period to repay up to \$100,000 of distributions
  - Extended casualty loss replacement period
  - Removal of \$100 floor and 10% AGI limit on casualty loss
  - Remember, these only apply in limited cases

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## Circular 230 and the CPA

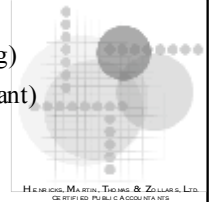
- Circular 230 governs practice before the IRS
- Practice is defined at §10.2(d)
- Practice limited those specifically authorized
- Most of the Circular revised in 2002
- More controversial 2005 Revisions
  - Tax shelter opinion revisions
  - Best practices provision



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## The CPA's Authority Before the IRS

- CPA license granted by the various states
- 5 USC §500(c) grants the right to practice before the IRS to an individual who is qualified to practice as a CPA in any state
- Federal grant of power that also is granted to two other classes
  - Attorneys (again based on state licensing)
  - Enrolled Agents (pure federal license grant)



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## The CPA's Authority Before the IRS

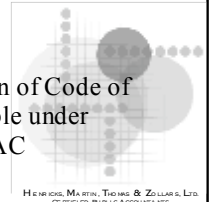
- CPA's authority subject to IRS regulation authorized by 5 USC §500(d)(2)
- Detailed authorization found at 31 USC §330
  - Allows Treasury Department to regulate those practicing before the IRS
  - Can remove the right to practice for cause
- Individual barred from practice cannot be assisted by those not barred—doing so is a violation of Circular 230



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## Other Standards

- CPAs are subject to other standards of conduct
- Virginia Board of Accountancy
  - Law and Regulations (Chapter 44 of Title 54.1 of Code of Virginia)
  - Generally recognize AICPA standards
    - *Code of Professional Ethics*
    - *Statements on Standards for Tax Services*
  - IRS suspension or disbarment a violation of Code of Virginia §54.1-4413(A)(4) and punishable under Board of Accountancy Regulation 18 VAC 5-21-120(M)



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## Structure of Circular 230

- Subpart A—Authority to Practice
- Subpart B—Standards of Conduct and Performance
- Subpart C—Sanctions
- Subpart D—Rules for Disciplinary Proceedings
- Subpart E—General Provisions



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## Circular 230 Subpart B

- Area of Major Changes
- Recently Revised Areas
  - §10.33 Best Practices
  - §10.35 Covered Opinion Requirements
  - §10.36 Procedures to Ensure Compliance
  - §10.37 Other Written Advice
- Significant 2002 Revision §10.29 Conflicts of Interest



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## §10.33 Best Practices

- “Aspirational” standard
  - §10.52(a)(1) removes this provision from enforcement rules...for now
  - Many see as a warning to the professional community to clean up its act or the IRS will do it for them
  - Malpractice issue—standard of care
- Best Practices defined as
  - Compliance with all other parts of Circular 230
  - Meeting four performance standards



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## §10.33 Best Practices

- Standard One: Communicate clearly with the client regarding the terms of the engagement
  - Determine client's expected purpose in obtaining advice and how it will be used
  - Establish clear understanding with client (can you say “engagement letter”)



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## §10.33 Best Practices

- Standard Two: Evaluation of facts and the law
  - Establish the facts
  - Determine relevant facts
  - Reasonableness of assumptions/representations
  - Relate law to the facts (including judicial doctrines)
  - Arrive at a conclusion based on law and facts



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## §10.33 Best Practices

- Standard Three: Advising the Client
  - Inform client of the import of the conclusions reached
  - Specifically, need to advise client about whether he/she will be able to avoid accuracy related penalties under the IRC if taxpayer relies on the advice (a theme we'll revisit)
  - Note that nothing in this provision mentions *written* advice



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## §10.33 Best Practices

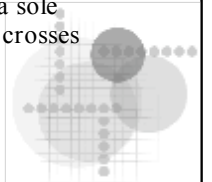
- Standard Four: Fairness and Integrity
  - Must act with fairness and integrity
  - Applies to all parties the representative interacts with—not the just client



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## §10.33 Best Practices

- Responsibilities to ensure best practices are followed
  - Person with “primary responsibility” for overseeing the firm's tax advice practice is responsible
  - We'll see this repeated
  - May not be easy to identify if you aren't a sole practitioner—especially since tax advice crosses specialties



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## §10.35 “Covered Opinion” Requirements

- Generated the most heat from these new regulations
- Major concern about how broadly these rules apply
  - Types of written documents that fall under the rules
  - May impact CPAs who don't see themselves in tax practice
    - Financial planning
    - Business valuation

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## Who is Covered by these Rules

- A practitioner who provides a covered opinion shall comply with these standards
- Practitioner
  - Individual described in §10.2(e) of Circular 230— which reference §10.3(a), (b), (c) or (d)
  - §10.3(b) brings in any CPA not currently under suspension or disbarment by the IRS
  - You're “in” unless the IRS has thrown you “out” if you are a CPA

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## Covered Opinion Definition

- Since we're all CPAs, our only out is that what we're doing is not a covered opinion
- All written advice potentially is “in” including electronic communications
  - Letters
  - Faxes
  - Emails
  - Instant messages

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## Covered Opinion Definition

- Definition
  - Written advice (as noted before)
  - Concerning at least one Federal tax issue
  - Falls into one of the categories
    - Listed transactions
    - Principal purpose transaction
    - Entity, plan or arrangement
      - Reliance opinion
      - Marketed opinion
      - Condition of confidentiality
      - Contractual protection

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## Federal Tax Issue

- Defined at §10.35(b)(3)
- Concerns federal tax treatment of
  - Item of income
  - Gain or Loss
  - Deduction
  - Credit
  - Existence or absence of a taxable transfer
  - Value of property for Federal tax purposes

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## Federal Tax Issue

- Exceedingly broad coverage—almost everything a CPA deals with
- Significant Federal Tax Issue
  - IRS has a “reasonable basis” for a successful challenge and
  - Resolution could have a significant impact, whether beneficial or adverse and under any reasonably foreseeable circumstance, on the overall Federal tax treatment of the transaction or matter under consideration

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## Federal Tax Issue

- What is a “reasonable basis” for challenge?
  - Under §6662 the CPA community has generally interpreted “reasonable basis” for a position as being substantially less than a 50% chance (down to 15% or 20%)
  - Does the same test apply for this purpose as well?

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## Types of Transactions

- If interpreted broadly, may involve almost every written documents
- Listed transaction is the only type that doesn't require a “partnership or other entity, any investment plan or arrangement”
- What does that phrase mean?
  - Do we treat it the same as we have §6662(d)(C)(ii) for what is a tax shelter?
  - Or are the identical words now subject to a broader meaning?

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## Listed Transactions

- Defined at §1.6011-4(b)
- IRS published list of transactions
- As well, “substantially similar” transactions count as well
- Topic of what is a listed transaction covered in presentation that can be downloaded at <http://ezollars.libsyn.com>
- Only a “just say no” written document will not have to be a covered opinion—no “opt out”

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## Principal Purpose Transactions

- No “opt out” option
- Principal purpose of “transaction” is
  - Avoidance or
  - Evasion
- Avoidance appears to be a broad category that covers any reduction in tax
- What about valuations for family limited partnerships?

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## Principal Purpose Transactions

- Valuation
  - Value of property under IRC §2512
  - For computing the tax under IRC §2501
- Certainly appears to be material to the resolution of the tax consequences of the transaction
- Valuations would always appear to have a reasonable chance of a challenge given the basic nature of a valuation
- Remember, no opt out if principal purpose

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## Reliance Opinions

- Largest potential “catch all” problem area
- Advice concludes one or more significant Federal tax issues will be resolved in the taxpayer's favor at a confidence level of at least more likely or not
- More likely than not is a greater than 50% likelihood
- Actual words “more likely than not” or “greater than 50% chance” do *not* have to appear in the written advice

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## Reliance Opinions

- Note that have two tests
  - Are there significant Federal Tax Issues (reasonable chance the IRS could successfully challenge the position)
  - Does the advice resolve *any* of these issues in the taxpayer's favor
- In evaluating the position, you cannot consider
  - Chance of examination or item not being raised in an exam
  - Chance of resolution through settlement

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## Reliance Opinions

- “Opt out” disclaimer exception
  - Can remove a reliance opinion from the covered opinion rules if meet the disclaimer disclosure rules found at §10.35(b)(4)(ii)
  - Cannot involve a listed transaction or principal purpose transaction
  - Must be prominently disclosed
    - Top of document and larger typeface rules removed from final regulations
    - However, cannot be in a footnote or small type

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## Reliance Opinions

- Content of “Opt Out” Disclaimer
  - Must be in the written advice
  - Indicates the advice was not intended or written by the practitioner to be used for the purpose of avoiding penalties that may be imposed on the taxpayer *and*
  - The advice cannot be used to avoid penalties that may be imposed
  - Meant to remove the “reliance on a professional” defense for a client

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## Reliance Opinions

- Should we opt out everything?
  - A number of firms have decided yes—have opt out language attached to even the most mundane correspondence (“I’ll see you at our kid’s softball game—this advice cannot be used...”)
  - Some concern may open CPA up to claim that CPA removed penalty protection unnecessarily if overused
  - Note that the disclaimer does not limit the type of penalty for which no reliance is permitted—it’s more than just the tax shelter penalties

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## Reliance Opinions

- Penalties it shouldn't apply to
  - §6662(d)(B) Substantial Understatement Penalty
  - Only requires substantial authority, not more likely than not position
  - Does the “opt out” language put the client at risk for a penalty they should be able to get out of?
  - What is our responsibility to the client in this matter?
  - Overuse of opt out may be hazardous to the client's financial health—and, in a malpractice action, yours

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## Language

- IRS rules require that I disclose to you that any advice contained in this letter (or email, fax, etc.) is not intended to be, and cannot be used, for the purpose of avoiding penalties imposed on you.
- Above is an example only—actual drafts vary from firm to firm

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## Limits of Opt Out

- Remember that not all covered opinions can be “opted out” of
  - Listed transactions
  - Principal purpose transactions
- Does opt language in a document discussing these items primarily prove the CPA's lack of professional competence?
- IRS view of FLPs—will they admit it's possible to opt out for work related to a FLP?

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## Marketed Opinions

- Advice a practitioner knows, *or has reason to know*,
  - Will be used by or referred to by a person other than a member of the practitioner's firm
  - To promote, market, or recommend
  - Partnership or other entity, investment plan or arrangement
  - To one or more taxpayers

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## Marketed Opinions

- If written advice is used in that fashion, may have a problem
  - §1031 rules advice for real estate agent example
  - Online message board example
  - Magazine article example
  - Client purchasing a building, brings in a partner who is not a client after receiving advice
    - Client does it to give friend a good deal as compared to
    - CPA is aware client unlikely to be able to acquire property by his/herself

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## Marketed Opinions

- Modified opt out for marketed opinions found at §10.35(b)(5)(ii)
  - Standard reliance opinion opt out disclosure *plus*
  - Advice was written to support the promotion or marketing of the transaction or matter *and*
  - Taxpayer should seek independent advice based on the taxpayer's particular situation from an independent tax advisor
- Second issue is going to be the problem

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## Marketed Opinions

- Note that your standard opt out language will generally not be useful to defend against a claim the item was a marketed opinion
- If third party ends up with a written document that CPA authored with a standard disclaimer, may be a problem
- At least consider adding restriction on the advice not being used to market any transaction

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## Opinion Subject to Conditions of Confidentiality

- Defined at §10.35(b)(6)
  - Imposes a limitation on disclosure of the tax treatment or tax structure of a transaction
  - Limitation protects the confidentiality of the practitioner's strategies
  - Does not matter if not legally binding
  - Claim that a transaction is proprietary or exclusive is not a condition of confidentiality if no restriction is imposed on disclosure of tax treatment or tax structure

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## Opinion Subject to Conditions of Confidentiality

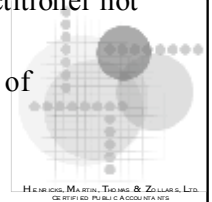
- Definition is similar to, but not identical to, the definition found at Regulation §1.6011-4
- Reportable transaction rules discourage this type of transaction already



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## Contractual Protection

- Defined at §10.35(b)(7)
  - Right to full or partial refund of fees paid if tax consequences not sustained *or*
  - Fees are contingent upon realization of tax benefits from the transaction
- Could be triggered by accident if practitioner not aware of this matter
- IRS concern was “no risk” marketing of transactions



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## Excluded Communications

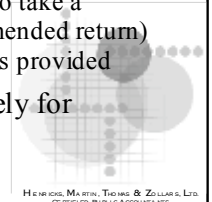
- Issued in response to comments on original draft of changes
- Preliminary Advice—reasonably expected to provide subsequent written advice that will meet the covered opinion standards
- Specific items of advice
  - Qualifications of a qualified plan
  - State or local bond opinion (covered by other rules)
  - Included in SEC document filing



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## Excluded Communications

- Post transaction advice
  - Solely for use of a particular taxpayer
  - Provided *after* taxpayer has filed a tax return reflecting the tax benefits of a transaction
  - Will not apply if practitioner knows, *or should know*, the advice will be used by the taxpayer to take a position on a tax return (including an amended return) filed after the date on which the advice is provided
- Advice to practitioner's employer solely for determining tax liability of employer



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## Excluded Communications

- Negative Advice
  - The “Just Say No” standard
  - Advice that does not resolve any Federal tax issue in favor of the taxpayer *and*
  - Does not provide a conclusion favorable to the taxpayer at any confidence level (including that the position is not frivolous) on any Federal tax issue

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## Is it Covered Flowchart?

- Chart in appendix at page 32
- Prepared by Kip Dellinger, CPA of California and used by permission
  - Author for CCH on practice before the IRS
  - Has authored a number of commentaries on the revisions to Circular 230
- Walk through the flowchart to work out if you have an issue

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## Covered Opinion Standards

- If CPA either must issue a covered opinion or decides not to opt out, must
  - Perform required procedures in accordance with Circular 230's standards
  - Comply with standards related to reliance on the work of others
  - Must make certain required disclosures

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## Covered Opinion Standards

- Required Procedures regarding factual matters found at §10.35(c)(1)
  - Must identify and ascertain the relevant facts
  - Opinion must consider all facts determined to be relevant (so any fact not discussed is not relevant, at least in the view of a plaintiff's attorney)
  - Must not base opinion on any unreasonable factual assumption (including those related to future events)
    - Again, a know or should have known standard
    - Includes reliance on projection, forecast or appraisal

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## Covered Opinion Standards

- Required Procedures regarding factual matters found at §10.35(c)(1)
  - An assumption that a transaction has a business purpose or is profitable aside from tax benefits is by definition unreasonable
  - That means the practitioner must conclude that such a condition exists or will exist, and not just assume it away
  - Many of the opinions the IRS was upset with assumed away these issues

## Covered Opinion Standards

- Required Procedures regarding factual matters found at §10.35(c)(1)
  - Cannot rely on a projection, financial forecast or appraisal if practitioner knows, or should know,
    - Person performing the projection, forecast or appraisal lacks the skills to prepare the item in question (much like compilation standard of evaluating the qualifications of person performing the accounting work)
    - The projection, forecast or appraisal is incorrect or incomplete
  - Disclose all factual assumptions in separate section

## Covered Opinion Standards

- Required procedures for reliance on third party found at §10.35(c)(1)(iii)
  - Cannot base opinion on unreasonable factual representation, statements or finding of the client or any other person
  - Is unreasonable if practitioner knows, or should know, there's a problem with the representation
  - Example makes a point that a naked representation of a business purpose is unreasonable—must include a specific description of business purpose

## Covered Opinion Standards

- Required procedures for reliance on third party found at §10.35(c)(1)(iii)
  - Must also perform “smell test” on business purpose representation (IRS is making special emphasis here due to prior marketed opinions)
  - Opinion must identify in a separate section all factual representations, statements or findings of the *taxpayer* that were relied upon by the practitioner

## Covered Opinion Standards

- Required procedures for relating the law to the facts found at §10.35(c)(2)
  - Must relate the applicable law (including judicial doctrines) to the relevant facts
    - Note this means all applicable law and doctrines
    - Can't "skip" troublesome areas
  - Cannot assume a favorable resolution of any Federal tax issue except
    - For items not covered in a limited scope opinion *or*
    - Comply with reliance standards and rely on 3<sup>rd</sup> party

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## Covered Opinion Standards

- Required procedures for relating the law to the facts found at §10.35(c)(2)
  - Generally prohibit assumptions as to the law
  - The practitioner is presumed to be the person with expertise that is being relied upon to make a conclusion about the resolution of the issue
  - Opinion cannot be internally inconsistent
    - Pieces have to be coordinated
    - Cannot simply have item by item support if presumed resolution of A cannot exist at the same as resolution of B

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## Covered Opinion Standards

- Required procedures for relating the law to the facts found at §10.35(c)(2)
  - Must come to a conclusion as each Significant federal tax issue
    - Conclusion as to whether the taxpayer will prevail on each issue
    - If unable to reach a conclusion, the opinion must state the practitioner is unable to reach a conclusion on the specific issues involved
    - Opinion must describe the reason for each conclusion (no "Amazing Kreskin" revelations)

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## Covered Opinion Standards

- Required procedures for relating the law to the facts found at §10.35(c)(2)
  - Must come to a conclusion as each Significant federal tax issue
    - Include facts and analysis supporting the conclusions or the inability to reach a conclusion
    - If fail to reach "more likely than not" confidence level on one or more issues, must include specific disclosure that opinion cannot be relied upon to avoid penalties and that opinion failed to reach a more likely than not conclusion as to one or more issues

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## Covered Opinion Standards

- Required procedures for relating the law to the facts found at §10.35(c)(2)
  - Evaluation must be based *solely* on the merits of the issue (§10.35(c)(2)(iii)) and cannot consider
    - Possibility return will not be audited *or*
    - Issue would not be raised on audit if the return was audited *or*
    - Issue would be resolved through settlement if it was raised on audit
    - Basically, assume you are in court with a decision being rendered on this issue

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## Covered Opinion Standards

- Required procedures for relating the law to the facts found at §10.35(c)(2)
  - A marketed opinion *must* reach a more likely than not confidence level on each Significant federal tax issue or it cannot be issued except with use of the marketed opinion disclaimer discussed earlier

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## Competence Requirements

- Found at §10.35(d), requires the practitioner be competent to provide the opinion
- Note that CPAs are already under a similar rule in the *Code of Professional Conduct Ethics Interpretation 201-1*
- Must be knowledgeable in *all* aspects of Federal tax law relevant to the opinion being rendered

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## Competence Requirements

- Can rely on the opinion of another unless know or should know opinion should not be relied upon
- If rely on opinion of another practitioner, must identify the other opinion and set forth the conclusions reached in the other opinion
- As well, must be satisfied that the analysis, taken as a whole, satisfy the requirements of Circular 230 (similar to standard in *SSTS No. 1*, paragraph 7)

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## Limited Scope Opinions

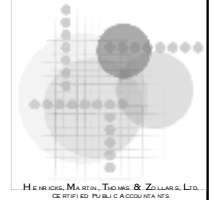
- Can be used by practitioner to reduce the opinion to less than all significant Federal tax issues
- However, significant rules must be followed to make use of a limited scope opinion
- Not available for certain types of transactions



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## Limited Scope Opinions

- Taxpayer and practitioner must agree that the scope of the opinion and the taxpayer's ability rely on the opinion is limited (engagement letter would be extraordinarily useful)
- Opinion does not address
  - Listed transaction
  - Principal purpose transaction
- Opinion is not a marketed opinion
- Appropriate disclosure is made



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## Limited Scope Opinions

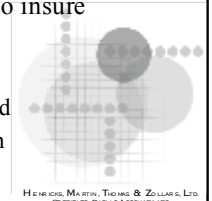
- Can make *reasonable* assumption of favorable resolution of a significant Federal issue
- Must specifically identify assumed favorable resolutions in a separation section of the opinion
- Still requires practitioner to identify all issue and alter the client to those issues
- If not mentioned, presumably it's not relevant and the resolution would not impact the result



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## §10.36 Procedures to Ensure Compliance

- Person with responsibility of oversight of a firm's tax advice practice must take steps to insure compliance
- Personally liable for violation of Circular 230
  - Through willfulness, recklessness or gross incompetence person fails to take steps to insure compliance *and*
    - Member of firm violates §§10.35 or 10.39
    - Firm has engaged in pattern of violation and
    - Does not take action to correct the situation



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## §10.37 Other Written Advice

- Written advice that is not a covered opinion falls under these rules
- Written advice cannot be issued if
  - Based on unreasonable factual or legal assumptions (including assumptions about future events)
  - Unreasonably relies on representation, statements or findings of client or third party
  - Does not consider all facts practitioner knows or should know
  - Considers “audit lottery” issues

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## §10.37 Other Written Advice

- Facts and circumstances will be used to determine if practitioner complied with this provision
  - Quick phone call on a simple matter requires less thorough discussion
  - Client asking about a complex proposed transaction would require more
- Does “opt out” language mean CPA has indicated we have a “more complex” situation and drop the CPA back into a similar mess?

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## §10.37 Other Written Advice

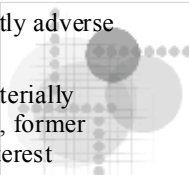
- IRS indicates that a higher standard of care will be applied if the practitioner knows or should know that the advice will be used by someone other than the person the practitioner is working with



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## §10.29 Conflicts of Interest

- Added previously, but not an area many CPAs looked at
- Imposes a stricter conflict standard
- Shall not represent a client if there is a conflict of interest
  - Representation of one client will be directly adverse to another client
  - Significant risk representation will be materially limited by responsibility to another client, former client or third person, or by a personal interest



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## §10.29 Conflicts of Interest

- However, can still represent the client if
  - Practitioner believes will be able to provide competent and diligent representation to the client
  - Representation not prohibited by law (like state accountancy regulations, SEC requirements, etc.)
  - *Each affected client gives informed, written consent*
  - Copies of written consent retained for 36 months from date of conclusion of representation of affected client and must be provided to IRS on request

## Circular 230 Subpart C

- Sanction provisions of Circular 230
- State Board still has impact
  - Federal law only recognizes your right to practice so long as you are authorized to practice as a CPA
  - So if no longer have right to practice in any state, are already “out”
- However, IRS can independently impose sanctions, even if State Board does not take action

## §10.50(a) Penalties

- Can take following actions
  - Censure (public reprimand)
  - Suspend (out for a period of time)
  - Disbar (out, period)
- Actionable matters
  - Practitioner is incompetent or disreputable
  - Fails to comply with any regulation in Circular 230
  - With intent to defraud, willfully and knowingly misleads or threatens a client or prospective client

## §10.51 Incompetence & Disreputable Conduct

- Laundry list of actions deemed to demonstrate either incompetence or disreputable conduct
- Special interest in §10.51(j) which prohibits
  - Knowingly aiding and abetting another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person
  - A taint is imposed on individual that is sanctioned that could “rub off” on another practitioner

## §10.52 Violation of Regulations

- Three classes of rules are created by this regulation
- §10.33 “Aspirational” standard exempted from sanctions
- §§10.34, 10.35, 10.36 and 10.37 are subject to sanction if violated recklessly or through gross incompetence
- All other regulations subject to a willful violation standard

## Circular 230 Subpart B

- Other key provisions
- §10.21 Knowledge of client's omission—must notify client of violation and advise of potential consequences under the Code and regulations
- §10.22 Due diligence and use of others—must use reasonable care in supervising the work of others
- §10.23 Prompt disposition of pending matters

## Circular 230 Subpart B

- §10.26 Notaries—Practitioner may not perform any official act as a notary public
  - Any matter administered by the IRS
  - Any matter for which practitioner is employed as counsel, attorney or agent
  - Any matter in which the practitioner is interested
- §10.27 Fees—May not charge an unconscionable fee and contingent fees subject to limitations (generally no on original return positions, with restriction on amended returns or claims)

## Circular 230 Subpart B

- §10.28 Return of client's records—Be careful here, you must comply with both this rule and the state accountancy rules on the same matter. If either requires that an item be delivered to a client, it must be delivered
- §10.30 Solicitation—Prohibits misleading solicitation and contains detailed rules on certain items. Note that if you publish a schedule of fees under this provision, you must charge no more than that schedule for at least 30 days

## Circular 230 Subpart B

- §10.31 Negotiation of Taxpayer Checks—Don't do it
- §10.32 Practice of Law—Circular 230 does not authorize the practice of law
- §10.34 Tax return positions
  - Realistic possibility standard (1 in 3 chance)—and taking non-frivolous position (not patently improper)
  - Note conflict between client and practitioner interests
  - Must advise client on potential penalties

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## Circular 230 Subpart B

- §10.34 Tax return positions
  - May generally rely on information furnished by the client (note difference from covered opinion standard)
  - Cannot ignore information known to the practitioner or the implications of such information
  - Basically, an “eyes open” standard

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## Questions?

Email me at [ed@hmtzcpas.com](mailto:ed@hmtzcpas.com)

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