

Practitioners: File Your Taxes Or Face IRS Circular 230 Sanctions

Proposed Revisions to Circular 230 Contain Expedited Suspension Procedures For Practitioners Significantly Behind On Their Own Federal Tax Obligations

By [Richard Paul McClellan III](#)

The IRS is concerned about “practitioners who demonstrate that they are unfit to practice by repeatedly failing to comply with their own tax obligations.” See, [Internal Revenue Bulletin 2012-40](#), 10/1/2012, at 426.

The IRS is proposing to sanction authorized practitioners significantly behind on their tax filings by making them subject to expedited suspension by the Office of Professional Responsibility. The criteria for the proposed expedited suspension provisions are (a) failing to file a federal annual return for four of the five years immediately preceding the sanction; or (b) failing to make a return required more frequently than annually (i.e. employment tax returns), during five of the seven tax periods immediately preceding the proceeding. 2012-40 I.R.B. at 430.

The proposed regulations are not final. Nonetheless, practitioners subject to Circular 230 should be aware that their own tax filing status is likely to become increasingly relevant to their continued livelihood. Current provisions of Circular 230 make filing and payment compliance significant mostly in the context of an enrolled agent’s application and renewal. See, [Circular 230](#), Section 10.5(d)(1), referencing Section 10.51(a)(6)[“willfully failing to file a Federal tax return” may be “disreputable conduct” subject to sanction.] The proposed new regulations do not require the non-compliance to be ‘willful.’ Rather, “willful disreputable conduct” is established by the record of non-compliance. While at first pass this might appear to be a distinction without a difference, most tax professionals understand that proving “willful” failure to file is much more difficult than merely proving the failure to file.

In an era of data-mining and relatively sophisticated computer sorting capacity by tax authorities, non-compliant tax professionals are likely to be easily identified by the IRS. Non-compliant individuals face not only a potential restriction of their professional practice but adverse publicity, expenses relating to legal representation, and, presumably, a tax bill once outstanding returns have been filed. Willful failure to file is a federal offense, and tax practitioners are frequent targets of criminal prosecution. See, [IRB 2012-35](#), 8/27/2012, at 328, for a list of practitioners recently suspended from practice before the IRS, many for criminal tax convictions.

There is nothing in the proposed regulations that increases the importance of “back tax” tax balances as a factor in practice before the IRS. Practitioners not in filing compliance should consider that filing outstanding returns and facing resulting balances is preferable to the

consequences of continued non-filing. Depending on various factors beyond the scope of this update, practitioners should consider obtaining professional advice and, if warranted, representation.

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