

Study Unit One

Practice before the IRS

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When a dispute or disagreement over tax issues arises, a taxpayer may have to appear before the IRS. Enrolled agents, CPAs, attorneys, and other individuals authorized to practice before the IRS may represent taxpayers. This study unit discusses the various individuals who may practice before the IRS, their standards of conduct, and other requirements of enrolled agents.

1.1 Authority to Practice

Rules of Practice

The rules governing practice before the Internal Revenue Service (IRS) appear in Treasury Department Circular 230, *Regulations Governing Practice before the Internal Revenue Service*.

- We have reproduced Circular 230 as [Appendix A](#).

Practice before the IRS

Practice before the IRS is the presentation to the IRS, or any of its officers or employees, of any matter relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS.

Practicing before the IRS includes

- Communicating with the IRS for a taxpayer
- Representing a taxpayer at conferences, hearings, or meetings with the IRS
- Preparing necessary documents and filing them with the IRS for a taxpayer
- 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

The following do **not** constitute practicing before the IRS:

- Preparing a tax return, an amended return, or a claim for refund
- Furnishing information upon request of the IRS
- Appearing as a witness for the taxpayer

Who may Practice

Only authorized persons may practice before the IRS (i.e., practitioners). The following persons may practice before the IRS:

- Attorneys
 - An attorney is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.
- Certified Public Accountants (CPAs)
 - A CPA who is not suspended from practice by the Office of Professional Responsibility and who is currently qualified to practice as a CPA in any state
- Enrolled agents
- Enrolled actuaries, for limited purposes listed under Sec. 10.3(d) of Circular 230
- Enrolled retirement plan agents, for limited purposes listed under Sec. 10.3(e) of Circular 230
- Annual Filing Season Program participants
 - The limited right to represent clients before the IRS is accorded to non-credentialed preparers only if they participate in the IRS Annual Filing Season Program (AFSP) and they must have prepared the return.
- Unenrolled individuals, if specifically permitted
- Appraisers

	TYPES OF PRACTITIONERS	Attorney, CPA, EA	AFSP Participants/ Others Specifically Allowed to Practice
	ALLOWED PRACTICE BEFORE THE IRS	Unlimited	Limited
Type of Practice before the IRS	PREPARATION OF RETURN OR CLAIM FOR REFUND	Sign returns and refunds when completed "all or substantially all" of a return or refund	Sign returns and refunds when completed "all or substantially all" of a return or refund
	REPRESENTATION	<ol style="list-style-type: none"> 1) Before anyone at the IRS 2) Examination and appeals 3) Any return or refund 	<ol style="list-style-type: none"> 1) Before IRS revenue agents, customer service representatives, and employees 2) During examination only 3) Return that tax return preparer signed himself or herself for the period under examination 4) Must participate in AFSP or be specifically permitted to practice
	TAX ADVICE	Unlimited including tax planning	Limited to return or refund preparation

Attorney or CPA Requirements to Practice

To practice before the IRS, an attorney or a CPA must

- ✓ File a written declaration, for each party (s)he represents, that (s)he
 - Is qualified currently
 - Has been authorized to represent the party
- ✓ Not be suspended or disbarred

Enrolled Agent

An enrolled agent is a person who has earned the privilege of representing taxpayers before the IRS by either (1) passing a three-part comprehensive IRS test covering individual and business tax returns or (2) through experience as a former IRS employee. Enrolled agent status is the highest credential the IRS awards. Individuals who obtain this credential must adhere to ethical standards and complete 72 hours of continuing education courses every 3 years.

Enrolled agents, like attorneys and CPAs, have unlimited practice rights. This means they are unrestricted as to which taxpayers they can represent, what types of tax matters they can handle, and which IRS offices they can represent clients before.

An enrolled agent may represent a particular party upon filing a written declaration that (s)he

- Is qualified currently and
- Has been authorized to represent the party.

Only natural persons may be enrolled agents.

- U.S. citizenship is not required.
- Enrollment is available to, but not required of, attorneys and CPAs. They are automatically entitled to practice before the IRS.

Eligibility to Become Enrolled

Eligible individuals must meet certain requirements for enrollment.

- **Conduct.** Enrollment is precluded by conduct that justifies suspension or disbarment from practice.
- **Exam.** A person who passes the IRS Special Enrollment Exam (also known as the Enrolled Agent or EA exam) may be enrolled.
- **IRS experience.** Past service in the IRS and technical experience are a basis for enrollment. Factors considered are
 - Length (minimum of 5 continuous years), scope, and extent of employment
 - Recommendation of the employing division's superior officer

Application to Become Enrolled

A properly executed application for enrollment is necessary.

- **Temporary recognition** to practice may be granted to an applicant in unusual circumstances. The application must be regular on its face and properly executed.
 - It does not constitute a finding of eligibility or enrollment.
 - It may be withdrawn at any time.
 - Consideration of the application may be conditioned on both
 - Filing additional information and
 - Submitting to written or oral examination under oath.
 - An applicant may file a written appeal within 30 days after the receipt of a notice of denial.
 - Enrollment card. Each approved applicant is issued an enrollment card.
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Eligibility of Non-Form 1040 Series Preparers to Represent Clients

Non-Form 1040 series preparers are individuals who certify that they do not prepare, or assist in the preparation of, any Form 1040 series tax return or claim for refund, except Form 1040-PR or Form 1040-SS, for compensation. Non-Form 1040 series preparers may

- Sign any tax return they prepare or assist in preparing
- Represent taxpayers before revenue agents, customer service representatives, or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination if the individual signed the tax return or claim for refund for the taxable year under examination