

# *Institutionalized*

# FAITH OF THEIRS



*Whether seen as factual or witnessed as fictionalized, Institutionalized Faith of **THEIRS** has a tangible force of its own making... with an unseen power in the suspension of our disbelief*

# [Institutionalized Faith]

[given the character of an institution or incorporated into a structured and usually well-established system]



“If you only knew the power of the Dark side...”



“Service + Enforcement = Compliance”

“Fear is the path to the dark side. Fear leads to anger. Anger leads to hate. Hate leads to suffering.”  
 Yoda quote (Fictional character from George Lucas's Star Wars)... with these 3 quotes most appropriate for IRS

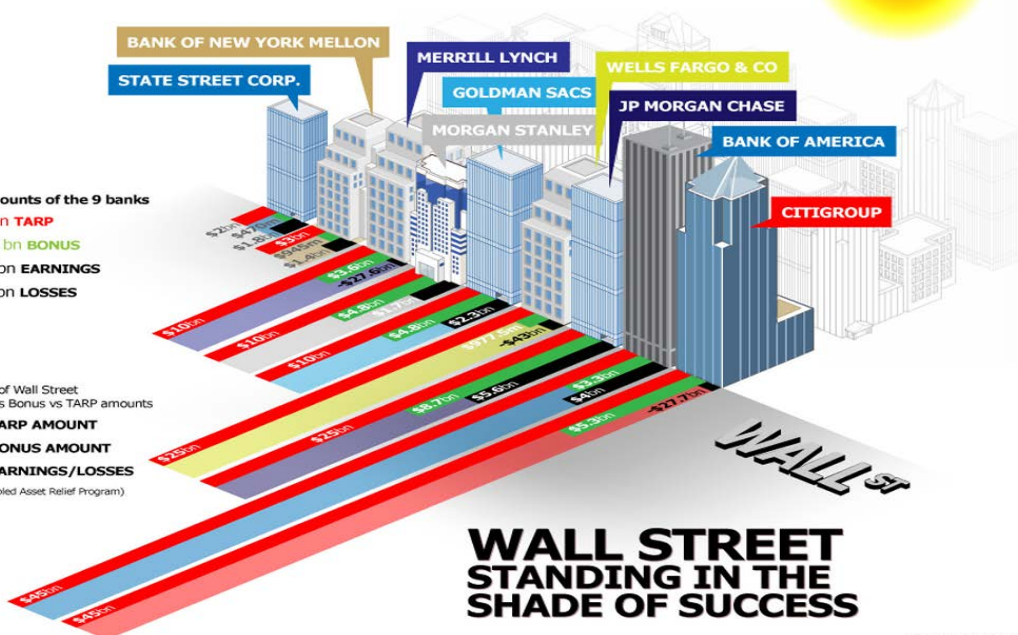
Financial Services Technology US

www.usfst.com



Total amounts of the 9 banks  
**\$173bn TARP**  
**\$32.9 bn BONUS**  
**\$16.8bn EARNINGS**  
**-\$98.3bn LOSSES**

Big banks of Wall Street  
 Earnings vs Bonus vs TARP amounts  
**TARP AMOUNT**  
**BONUS AMOUNT**  
**EARNINGS/LOSSES**  
 (TARP - Troubled Asset Relief Program)



**WALL STREET  
 STANDING IN THE  
 SHADE OF SUCCESS**

Buildings reflective of company HQ  
 Source: <http://www.oag.state.ny.us/>



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## Part 39. General Legal Services

### Chapter 4. Practice Before the Internal Revenue Service

#### Section 1. Matters Relating To Practice Before the IRS

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##### 39.4.1 Matters Relating To Practice Before the IRS

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##### 39.4.1.1 (05-18-2009)

##### Cases Originating with the Office of Professional Responsibility

1. Law Governing Practitioners. Described below are the principal statutes controlling practitioners before the IRS.
  - A. The **Treasury Practice Statute**. Disciplinary authority over practitioners before the IRS is given to the Secretary of the Treasury by 31 U.S.C. § 330. The statute provides that, subject to 5 U.S.C. § 500, the Secretary may regulate the practice of representatives of persons before the Department.
  - B. The **Agency Practice** statute permits attorneys in good standing before the highest court of a State, and certified public accountants duly qualified in a State, to practice, without enrollment, before the IRS. Section 500 does not limit the disciplinary authority of an agency over the individuals who appear in a representative capacity before the agency. 5 U.S.C. § 500(d)(2).
2. **Regulations**. The Secretary of the Treasury has promulgated regulations governing the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and certain others before the IRS. See



Title 31, Code of Federal Regulations, Subtitle A, Part 10, issued in pamphlet form as Treasury Department Circular No. 230 ("Circular 230" ). The Office of Professional Responsibility(OPR) administers and enforces Circular 230 under delegated authority of the Secretary of the Treasury.

#### **39.4.1.2 (05-18-2009)**

##### **Organizational and Attorney Responsibilities**

1. **General.** General Legal Services (GLS) advises and represents the Office of Professional Responsibility (OPR). See CCDM 30.3.2.3.4, Associate Chief Counsel (General Legal Services) . This section governs the handling of suspension and disbarment proceedings referred to GLS by OPR. This section also governs the handling of matters pertaining to limited practice by tax return preparers and the Joint Board for the Enrollment of Actuaries, see CCDM 39.4.1.7, Cases Originating with the Joint Board for the Enrollment of Actuaries. The section also provides information on the Service's conference and practice requirements and powers of attorney.
2. **Disclosure.** In connection with claimant representative matters, GLS Area Counsel and Branch Chiefs may disclose returns and return information as provided by IRC § 6103(1)(4). GLS attorneys directly involved in such matters may also exercise this authority, unless restricted by a GLS manager. Novel, unclear, or sensitive disclosure issues must be coordinated with the Office of Associate Chief Counsel (Procedure & Administration).
3. The litigation of disciplinary cases under Treasury Department Circular 230 is a responsibility of the Office of Associate Chief Counsel (GLS), which is primarily performed by Area Counsel GLS. The Service's Office of Professional Responsibility refers these cases to GLS for litigation. Many of the provisions that follow are by agreement with the Service. The following instructions do not replace a thorough understanding of the rules specified in Circular 230, but are only a summary.

#### **39.4.1.3 (05-18-2009)**

##### **Processing Litigation Cases by Area Counsel GLS**

1. **Referral of Cases by OPR.** The decision to institute a disciplinary proceeding is the prerogative of OPR. Once OPR requests a disciplinary proceeding, the case is sent to Area Counsel for legal review. OPR will refer disciplinary cases to the GLS Area Counsel in whose geographic area the subject practitioner (practitioner) resides. OPR will transmit file materials in an orderly fashion, with appropriate prong-filing, indexing, and tabbing.
2. **Point of Contact.** Prior to OPR's referral of the case, OPR will be the point of contact with the practitioner.

After referral, GLS will have responsibility for all communication with the practitioner. If the practitioner contacts OPR after the referral, such contact will be referred to the GLS attorney for appropriate handling.

3. **Update of Information.** OPR is responsible for updating all relevant file information prior to the referral of the case to GLS. Examples of the information that needs to be updated include, but are not limited to:
  - The practitioner's address pursuant to IRC § 6212
  - The practitioner's professional certification status
  - Gap tax year information (when the case is based upon allegations of noncompliance with the tax laws)
  - Plain English transcripts (Certificate of Assessments and Payments under blue cover seal) for relevant tax years
  - Plain English summary of the case
  - Names and phone numbers of OPR personnel making the referral, and such information for any other relevant Service personnel
  - A history of prior settlement discussions
4. **Notification of Referral.** OPR will advise the GLS Area Counsel and the Claims, Labor and Personnel Branch (CL&P) by email of the particulars of the transmittal (i.e., name of case, date sent, and addressee).
5. **Case Assignment.** Upon receipt of the file materials, GLS Area Counsel will assign the case to an attorney and, within seven days, notify OPR and CL&P via email of the receipt of the file and the assignment of the attorney. As part of the assignment process, GLS will enter the case into CASE-MIS. Whenever a case is transferred to another attorney, the new attorney will promptly advise the OPR and CL&P.
6. **Initial Review.** Within 28 days of the receipt of the case, the GLS attorney will review the case file and contact OPR to discuss any transmittal issues, any related litigation questions, and the need for any additional documents or other information. The responsible GLS attorney will advise OPR of any substantive problems with the litigation. The responsible GLS attorney will also advise CL&P of any problems with either the OPR's transmittal or important substantive aspects of the case. OPR is responsible for obtaining any additional information as requested by GLS throughout the litigation. The GLS attorney must be available throughout the litigation to discuss the case and related issues with OPR.
7. **Coordination.** When reviewing the case, the GLS attorneys should coordinate any novel, unclear, or sensitive issues with CL&P. When GLS attorneys require tax law assistance in understanding the facts of, or developing positions concerning, a case in litigation (or being considered for litigation) under Treasury

Department Circular 230, Office of Division Counsel (Small Business and Self Employed) will provide such assistance. Area Counsel (GLS) should request the assistance from the local Area Counsel (Small Business and Self Employed). In doing so, ask the Area Counsel (SBSE) to confirm that the attorney who will be rendering the assistance has no pending matters with the practitioner (as taxpayer or representative). If the SBSE attorney assigned has a pending matter with the practitioner, another SBSE attorney should be assigned. This is intended to avoid the circumstance where a taxpayer or taxpayer representative could allege that the disciplinary procedure is being used as leverage to obtain a favorable settlement or capitulation on a contested tax liability. When reviewing the case, Area Counsel attorneys should coordinate any novel, unclear, or sensitive issues, or any issue that may require a uniform approach, with CL&P, which, in turn, will coordinate with the Office of Associate Chief Counsel (PA) on any issue that can be expected to impact a matter of tax administration.

8. **Additional Information.** If the GLS attorney needs additional information from OPR to complete the review required by paragraph (7), OPR will provide such information in a timely fashion.
9. **Procedures after Initial Review.** No later than seven days after completing the initial review required by paragraph (7) above and having received any information requested from OPR under that paragraph, the GLS attorney must send a letter to the practitioner. This letter will advise the practitioner that OPR has forwarded the case to the Office of Chief Counsel for litigation and that a complaint will be filed promptly in the absence of a settlement.
10. **Procedures Prior to Filing of Complaint.** Before filing the complaint, the GLS attorney will allow the practitioner 21 days to respond. If the practitioner responds in good faith to the letter within 21 days, then the GLS attorney has another 21 days in which to negotiate a settlement. Any additional time to negotiate a settlement must be approved by the appropriate point of contact for OPR.
11. **Settlement Parameters.** OPR must provide GLS with the settlement parameters for the case when it refers the case. If the practitioner proposes a settlement within these parameters, GLS is authorized to settle without further contact with OPR. The GLS attorney will discuss with the appropriate OPR contact any good-faith settlement offers made by the practitioner that are outside the parameters set by GLS when the case was initially referred.
12. **Preparing and Issuing the Complaint.** If settlement is not reached, the GLS attorney will issue a complaint within 21 days after the expiration of the time permitted for settlement under paragraph (11). Prior to issuance of the complaint, the GLS attorney will obtain a complaint number from OPR. A complaint must provide a clear and concise statement of the facts and the law that are the

basis for the proceeding. The complaint is sufficient if it fairly informs the respondent of the charges against him or her so that he or she is able to prepare the defense. The complaint must specify the sanction sought, and an answer must be demanded, either in the complaint itself or in a separate paper attached to the complaint (as required by 31 C.F.R. § 10.62(c)). The complaint must allege that the respondent has engaged in practice before the Internal Revenue Service and was eligible to so practice at the time of the alleged violation. Service of the complaint is made by certified mail sent to the practitioner's last known address as determined under I.R.C. § 6212. 31 C.F.R. § 10.63 (2). If such service fails or is impossible, the assigned attorney will arrange for personal or other service as authorized under Circular 230. When the assigned attorney expects certified mail delivery to fail, another method of service may be attempted simultaneously. See 31 C.F.R. §§ 10.62-10.63 for detailed rules concerning complaint contents, service and filing.

13. **Service of Evidence in Support of Complaint After Complaint Issuance.** Within 10 days of service of the complaint, GLS must serve the practitioner with evidence in support of the complaint. 31 C.F.R. §10.63(d). OPR is responsible for providing GLS with the evidence in support of the complaint and marking documents as such when they refer the case to GLS for litigation. The attorney working the case should ensure that they have followed CL&P applicable supplemental guidance regarding the appropriate materials to be served. This requirement applies to complaints filed on or after September 26, 2007. 31 C.F.R. §10.63(f)
14. **Copies of Pleadings.** The GLS attorney will send copies of all pleadings to OPR, which will maintain the official records of all OPR-related litigation.

#### **39.4.1.3.1 (05-18-2009) Case Preparation**

1. The GLS attorney will obtain certified true copies under seal of any documents in the administrative file that support the allegations in the complaint (or which prove that OPR has complied with prescribed procedures). The GLS attorney should obtain any necessary affidavits from OPR personnel or other personnel. When not already provided in the administrative file, the GLS attorney should request certified copies of any court, bar association, or CPA licensing authority documents needed to prove the case.
2. The GLS attorney will properly prepare any Service personnel whose testimony may be required. The GLS attorney will inform deponents and witnesses of the agency's need for their presence at a deposition or hearing as early as possible and will cooperate with their supervisors to assure their availability.

3. The GLS attorney will coordinate with any non-government witnesses. If a prospective witness is willing to appear, the GLS attorney should complete witness fee forms to cover the witness' expenses.

**Note:**

The Service has no authority to compel the attendance of non-IRS witnesses.

4. When no answer has been filed, the GLS attorney will file a motion for default along with appropriate exhibits (complaint and proof of service) and a cover letter explaining the reasons why default appears appropriate. 31 C.F.R. §10.64 (d)

**39.4.1.3.2 (05-18-2009)  
Additional Charges**

1. This provision is intended to address the circumstance where, after referral and file transfer to GLS, further case development through (or at the request of) GLS reveals information that could support additional violations not referenced in the OPR's notice of possible proceeding (and upon which a conference has been offered). The information tending to support the additional violations might be revealed prior to the issuance of the prefiling letter (see CCDM 39.4.1.3(10)), after the prefiling letter, or after the complaint has been filed.
2. **Additional Violations before the PreFiling Letter.** When information supporting additional violations not previously discussed between OPR and the practitioner are determined to exist prior to the issuance of the prefiling letter, the GLS attorney will hold case processing in abeyance, and will afford the OPR an opportunity to consider the information. If OPR chooses not to act upon the new information, it will so advise GLS, and GLS will continue with the case on the basis of the information originally referred. If OPR asks GLS to pursue the new violations, GLS will advise the practitioner of the potential new allegations or violations in writing, make the offer of conference, and conduct the conference on the potential new violations. OPR may participate in the conference on the new violations; however, the case remains the GLS attorney's responsibility at all times and OPR may only advise as to whether they want GLS to pursue or settle the new violations. The prefiling letter will offer an opportunity to settle violations which have been made the subject of a prior offer of conference, and will call to the attention of the practitioner the potential for additional violations (and their nature) and afford the practitioner an opportunity for a conference with respect to those potential additional violations. The prefiling letter will not reflect that a decision has already been made to pursue the potential



additional violations. If a conference is requested, GLS will then host and conduct the conference, which may also include settlement discussions on violations in the original referral.

3. **Additional Violations after the PreFiling Letter and before the Complaint.** When information supporting additional violations (not yet made the subject of an offer of conference by OPR) is determined to exist after the issuance of the prefiling letter but prior to the issuance of a complaint, case processing will be held in abeyance, and OPR will be afforded an opportunity to decide whether such additional violations will be pursued. If OPR wishes to pursue such potential additional violations, GLS will advise the practitioner in writing of the existence of the potential additional violations and that the practitioner will be afforded an opportunity for conference with respect to them. GLS will host and conduct any conference requested. GLS will offer participation in the conference to OPR, and, if accepted, OPR and GLS will jointly conduct the conference hosted by GLS, with all communication following the conference to be made to GLS.
4. **Additional Violations After the Complaint.** When information supporting additional violations (not yet made the subject of an offer of conference by OPR) is determined to exist after the issuance of a complaint, the GLS attorney will continue case processing and OPR will be afforded an opportunity to decide whether such additional violations will be pursued. If OPR wishes to pursue such additional violations, the GLS attorney will seek the Administrative Law Judge's permission to amend the complaint. The GLS attorney will notify OPR of the Administrative Law Judge's decision. If the Administrative Law Judge has approved the request, the GLS attorney will amend the complaint.

#### **39.4.1.3.3 (05-18-2009) Discovery**

1. Within ten (10) days of receipt of the answer, the Administrative Law Judge should notify the parties that they have the right to seek discovery. 31 C.F.R. §10.71(a) Upon receipt of notice from the Administrative Law Judge of the right to request discovery, the GLS attorney will determine whether to request discovery from the respondent. If the GLS attorney determines a request for discovery is appropriate, the GLS attorney will file a written motion with the Administrative Law Judge that demonstrates the relevance, materiality, and reasonableness of the requested discovery. The GLS attorney will proceed with discovery as ordered by the Administrative Law Judge.
2. If the respondent files a motion requesting discovery, the GLS attorney will evaluate the motion and may file an objection. Discovery is limited solely to the taking of

depositions upon oral examination and requests for admissions. 31 C.F.R. §10.71. Requests for admissions are limited to a total of thirty (30), including any subparts within a specific request. 31 C.F.R. §10.71(c). Discovery also will not be authorized where it will unduly delay the proceeding, it will place an undue burden on the party, it is frivolous or abusive, the material sought is otherwise privileged, or the material is otherwise available. Where the Administrative Law Judge approves the respondent's request for discovery, the GLS attorney will respond timely to the request for discovery.

3. **Deposition Requested by the GLS Attorney.** Once the Administrative Law Judge has approved the GLS attorney's request to take a deposition by oral examination, the GLS attorney will arrange for a deposition date with the respondent's representative. See 31 C.F.R. § 10.71(b). The GLS attorney will also arrange for a suitable room for the deposition. The GLS attorney will prepare any Service personnel who will be deposed in accordance with CCDM 39.4.1.3.1(2). OPR will, upon notification by the GLS attorney, obtain a qualified court reporter for the deposition in order to make a verbatim transcript of the proceedings.

#### **39.4.1.3.4 (08-11-2004) Hearing Preparations**

1. The GLS attorney will arrange a hearing date and place with the presiding official, i.e., the Administrative Law Judge and the respondent's representative. The GLS attorney will also arrange for a suitable hearing room. Ordinarily, the hearing should be held near the respondent's residence, if the parties can agree. If a reasonable agreement cannot be reached, the hearing will take place in Washington, D.C.
2. OPR will, upon notification by the GLS attorney, obtain a qualified court reporter for the hearing in order to make a verbatim transcript of the proceedings.
3. The GLS attorney should arrive at the hearing location in sufficient time to:
  - A. Ensure the adequacy of the hearing room.
  - B. Ensure that the arrangements with the court reporter are satisfactory.
  - C. Review the evidence and expected testimony with the local witnesses.

#### **39.4.1.3.5 (08-11-2004) The Hearing**

1. The Government has the burden of proof on all material allegations of the complaint put in issue by the respondent. The GLS attorney will meet that burden by demonstrating the truth of those allegations by the standard of proof set forth in Circular 230 (i.e., clear and convincing evidence where the sanction sought is

disbarment or a suspension of six months or more and, otherwise, a preponderance of the evidence). Every allegation in the complaint that is not denied in the answer shall be deemed to be admitted and may be considered proved.

2. When the respondent introduces evidence in the nature of an affirmative defense, the Government should meet and disprove such evidence. For example, if the practitioner alleges facts tending to show that he or she was induced to violate Circular 230 by government agents (entrapment), the assigned attorney should treat the issue as if the Government has the burden to prove that respondent was not entrapped.

#### **39.4.1.3.6 (05-18-2009)**

##### **Proposed Findings and Conclusions**

1. Unless there is a default, the ALJ shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons. The ALJ will normally require proposed findings and conclusions to be filed after a set period after the receipt of the transcript. If any questions of law have been raised by the pleadings or at the hearing, the attorney will brief these issues. The GLS attorney will submit any reply briefs required by the ALJ.

#### **39.4.1.3.7 (05-18-2009)**

##### **Appeals to the Secretary**

1. It is a responsibility of the assigned GLS attorney to carefully review the initial decision of the ALJ and advise OPR of any adverse findings of fact or determinations of law. If OPR determines that such adverse findings or determinations warrant the filing of an appeal, the assigned attorney will prepare both an appeal, a brief in support thereof, and any reply or supplemental briefs that are requested. See CC-2005-006. The GLS attorney is responsible for serving the practitioner with GLS initiated appeals, briefs, responses etc.
2. If an appeal is filed by the respondent, the GLS Area Counsel that handled the case being appealed will prepare briefs in opposition to a respondent's appeal. OPR will send the Notice of Appeal to the appropriate GLS Area Counsel with a copy to CL&P. GLS will coordinate with OPR and the Office of Associate Chief Counsel (PA), as appropriate.
3. It is a responsibility of the GLS attorney to confirm that the necessary documentation for an appeal has been filed with the proper official delegated authority to decide appeals from decisions of ALJs under the Circular.

#### **39.4.1.3.8 (05-18-2009)**

##### **Closing the Case**

1. At the conclusion of a case, GLS will return OPR's original case files and copies of all pleadings, as well as evidentiary materials for OPR to maintain in its closed files as the official case file.

**39.4.1.3.9 (08-11-2004)**  
**Use of OPR Employees**

1. The Associate Chief Counsel (GLS) is authorized to appoint, with the concurrence of the Director of the Office of Professional Responsibility, a qualified OPR employee to perform all or such part of the GLS attorney's duties as is specified by the Associate Chief Counsel (GLS).

**39.4.1.4 (08-11-2004)**  
**Area Counsel Advice and Litigation Support**

1. **Advice Unrelated to Imminent or Pending Litigation.** With respect to local matters and issues that arise with agency employees and components in their geographic area, Area Counsel attorneys will provide advice on the authorities specified in this section. These matters include actions under the rules of practice in Circular 230, the rules of limited practice in Rev. Proc. 81-38, and, where issues under GLS jurisdiction are implicated, actions taken on electronic return originators and other electronic filing program participants. With respect to novel, unclear, or sensitive issues, Area Counsel will coordinate with the appropriate GLS branch.

**Note:**

Area Counsel attorneys will, upon request, provide advice as to whether alleged facts constitute a violation of the rules of practice for which a practitioner can be disciplined. With respect to novel, unclear, or sensitive issues, or any issue that may require a uniform approach, Area Counsel will coordinate a response with CL&P.

2. **Other Litigation Support.** With regard to matters under the enrollment provisions of Circular 230 or Rev. Proc. 81-38, Area Counsel attorneys will provide litigation support to DOJ on cases filed in District Courts in their geographic areas. GLS generally does not lead in providing litigation support to DOJ regarding discipline in the e-file program. GLS will refer e-file cases to the appropriate Division Counsel office, but will provide assistance to Division Counsel on any GLS matter (e.g., e-file conduct rules drawn from or analogized from Circular 230).
3. For coordination requirements for matters involving tax administration or Circular 230-related guidance, see CCDM 39.4.1.5.1.

#### 39.4.1.5 (05-18-2009)

##### Overview of Headquarters Branch Responsibilities

1. **Ethics and General Government Law Branch Responsibilities** . The EGG Branch provides advice to OPR and other Service personnel regarding practice before the Internal Revenue Service. Advice involving the interpretation of the regulations governing practice before the Internal Revenue Service (Circular 230) will be coordinated as specified in this section.
2. **Post-employment Practice Advice**. Advice concerning post-employment practice by former Government employees, their partners, and their associates is the responsibility of the Ethics and General Government Law Branch. Such advice includes, but is not limited to, advice on the Circular 230 isolation requirement for firms employing former officials of the Service and Counsel. See Exhibit 39.4.1-1, Model Isolation Statement for Firms Practicing Before the Service. Such advice would also include any issues arising under the Ethics in Government Act, or interpretation of provisions falling within 18 U.S.C. Part I, Ch. 11, or any issue affecting the duties of the Deputy Ethics Official responsibilities of the Associate Chief Counsel (GLS).
3. **Case Coordination**. The CL&P Branch serves as the point of contact for coordination of OPR litigation.
4. **Litigation Support**. GLS will also support DOJ on appealed OPR cases not otherwise covered by Area Counsel.

#### 39.4.1.5.1 (05-18-2009)

##### Coordination on Practice Issues Affecting Tax Administration or Circular 230-Related Guidance

1. **Practice Issues Affecting Tax Administration**. The Ethics and General Government Law Branch will coordinate any practice issues affecting matters of tax administration with the appropriate contact within the Office of Associate Chief Counsel (PA) or other affected function in the Office of Chief Counsel. For example, issues affecting the disclosure of tax return information under IRC § 6103 will be coordinated with the Office of Associate Chief Counsel (PA).
2. **Guidance**. The Office of Associate Chief Counsel (PA) is responsible for published guidance, including regulations, related to Circular 230 and practice before the Internal Revenue Service. In drafting guidance related to Circular 230 and practice, when it can be expected that matters of interest to the Office of Associate Chief Counsel (GLS) are or will be involved, the Office of Associate Chief Counsel (PA) will coordinate the guidance with the appropriate GLS branch. When advice or representation provided by GLS can be expected to impact a guidance project or create the need for a guidance project, the appropriate GLS branch will coordinate with the Office of Associate Chief Counsel (PA). In addition, when advice



or representation provided by GLS involves a novel, unclear or sensitive issue that concerns matters of direct interest to P&A with respect to Circular 230 or related guidance, the appropriate GLS branch will coordinate the issue with P&A.

#### **39.4.1.6 (08-11-2004)** **Reference Materials**

1. The statutes, regulations, official guidance, and other papers listed below are core reference materials for matters addressed by this section.
  - 31 U.S.C. § 330 (formerly 31 U.S.C. § 1026, 5 U.S.C. § 261, Act of July 7, 1884, ch. 334, § 3, 80 Stat. 378; the Treasury Practice statute)
  - 5 U.S.C. § 500 (the Agency Practice statute)
  - 29 U.S.C. § 1242
  - 31 C.F.R. Part 10, Treasury Circular 230 (Cat. No. 16586R), as amended 72 Fed. Reg. 54540 (Sept. 26, 2007)
  - 20 C.F.R. Part 901
  - Rev. Proc. 81-38 (Limited Practice Without Enrollment) (Pub. 470), 1981-2 C.B. 592
  - 26 C.F.R. Part 601, Subpart E Conference and Practice Requirements)
  - Rev. Proc. 68-29 (describing role of witnesses; superseded)
  - Form 2848, Power of Attorney and Declaration of Representative
  - Pub 947, Practice Before the IRS and Power of Attorney
  - Treasury Order No. 150-02
  - Treasury Order No. 107-04
  - General Counsel Order No. 9

#### **39.4.1.7 (08-11-2004)** **Cases Originating with the Joint Board for the Enrollment of Actuaries**

1. **Composition of Joint Board.** The Joint Board for the Enrollment of Actuaries (Joint Board) is composed of five members — three appointed by the Secretary of the Treasury and two appointed by the Secretary of Labor. In addition, the Pension Benefit Guaranty Corporation has one representative with no voting power. The Executive Director of the Joint Board for the Enrollment of Actuaries is responsible for administering the enrolled actuary program and conducting disciplinary proceedings.
2. **Responsibilities of Joint Board.** Under 29 U.S.C. § 1242(a), the Joint Board is authorized to establish reasonable standards and qualifications for the enrollment of persons performing actuarial services with respect to the Employee Retirement Income Security Act of 1974 (ERISA). The Joint Board has adopted regulatory standards and qualifications for persons performing

actuarial services covered by ERISA. The Joint Board enrolls individuals who satisfy such standards and qualifications.

3. **Disciplinary Action.** Under 29 U.S.C. § 1242(b), the Joint Board has disciplinary authority over enrolled individuals. The Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an individual under this section if the Joint Board finds that such individual:
  - A. Has failed to discharge his duties under the Act,  
*or*
  - B. Does not satisfy the requirements for enrollment as in effect at the time of his enrollment
4. **Applicable Rules and Procedures.** Regulations governing the Joint Board's enrollment and discipline of enrollees are published in 20 C.F.R. Part 901. The procedures for suspension and termination of enrolled actuary status resemble those in Circular 230.
5. **Litigation of Disciplinary Proceedings.** GLS litigates Joint Board disciplinary proceedings. These proceedings are comparatively rare. To the extent feasible, Joint Board disciplinary proceedings will be handled as if they were a Circular 230 proceeding. Area Counsel will coordinate with the CL&P Branch when a Joint Board case is submitted for litigation.
6. **Applicability of Circular 230.** Enrolled actuaries practicing before the Service are subject to Circular 230 as well as the Joint Board Regulations. Conduct leading to discipline under the Joint Board regulations is also likely to constitute grounds for discipline under Circular 230.
7. **Advice to Joint Board.** The Office of Chief Counsel may be asked to advise the Treasury representatives to the Joint Board. For example, in the past, the Ethics and General Government Law Branch has provided advice on general government law questions. Such advice will be coordinated with the Associate offices as necessary.

#### **39.4.1.8 (05-18-2009)**

##### **Limited Practice by Tax Return Preparers**

1. Revenue Procedure 81-38, 1981-2 C.B. 592, specifies the conditions under which an income tax return preparer who is not otherwise a practitioner has the privilege of limited practice. Rev. Proc. 81-38 also specifies the scope of such limited practice, and special rules that apply to those engaging in limited practice.
2. GLS Area Counsel will provide advice to Service personnel regarding the administration of Rev. Proc. 81-38. With respect to novel, unclear, or sensitive issues, Area Counsel will coordinate a response with the appropriate GLS branch.
3. Litigation support. GLS will also support the Department of Justice (DOJ) when actions taken under Rev. Proc. 81-38 are challenged in District Court.

**39.4.1.9 (08-11-2004)**  
**Conference and Practice Requirements**

1. Regulations governing practice before the IRS (including the Office of Chief Counsel) are prescribed by Subpart E, Conference and Practice Requirements, of the IRS's Statement of Procedural Rules (26 C.F.R. Part 601). The requirements are applicable to practice (including conferences) with respect to any matter involving any internal revenue tax. These regulations also specify the requirements for processing of powers of attorney. GLS Area Counsel will provide advice to Service and Counsel personnel regarding the Conference and Practice Requirements. Area Counsel attorneys should coordinate any novel, unclear, or sensitive issues with the appropriate GLS branch: CL&P or EGG.
2. Advice that impacts tax administration. Advice regarding the Conference and Practice Requirements will often impact the jurisdiction of many offices within Chief Counsel. Where such advice is implicated, GLS Area Counsel will contact the EGG Branch. The EGG Branch will coordinate any practice issues affecting matters of tax administration with the appropriate contact within the Office of Associate Chief Counsel (PA) or other affected function in the Office of Chief Counsel.
3. **Policy.** It is the policy of the Internal Revenue Service to encourage the discussion of disputed tax liability or any other matter in connection with an internal revenue tax which affects the taxpayer's interests. In furtherance of this policy, conferences will be held with taxpayers or their duly authorized representative. The following items are a summary of the highlights of the regulations.
4. **Persons to be Recognized as a Taxpayer's Representative.** No person may appear as a representative unless such person presents satisfactory identification and is recognized to practice before the Service. The following persons will be recognized to practice before the Internal Revenue Service:

Attorneys	Any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia, who is not currently under suspension or disbarment from practice before the Internal Revenue Service, and who files with the agency a written declaration that he or she is currently qualified as provided above and is authorized to represent the particular person in whose behalf he or she acts.
Certified Public Accountants	Any person who is duly qualified to practice as a certified public accountant in any state, possession, territory, commonwealth, or the District of Columbia, who is not currently under suspension or disbarment from practice before the Internal Revenue Service, and who files with the agency a written declaration that he or she is currently qualified as provided above and is authorized to represent the particular person in whose behalf he or she acts.
Enrolled Agents	Any person currently enrolled as an agent pursuant to the requirements of Circular 230.
Enrolled Actuaries	Any person who is enrolled as an actuary by the Joint Board for the Enrollment of Actuaries pursuant to 29 U.S.C. §1242. (Such practice is limited as specified in Circular

Attorneys	Any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia, who is not currently under suspension or disbarment from practice before the Internal Revenue Service, and who files with the agency a written declaration that he or she is currently qualified as provided above and is authorized to represent the particular person in whose behalf he or she acts.
	230.)
Any person	...qualified under the provisions of Circular 230 relating to temporary recognition of an applicant for enrollment or relating to limited practice without enrollment.

5. **Power of Attorney Required.** In practice before the Service, a power of attorney in proper form, executed by the taxpayer, will be required when the taxpayer's representative desires to perform one or more of the following services on behalf of the taxpayer:
  - A. Receive (but not endorse or collect) a check in payment of any refund of internal revenue taxes, penalties, or interest
  - B. Execute a waiver or offer of a waiver of restriction on assessment or collection of a deficiency in tax, or a waiver of notice of disallowance of a claim for credit or refund
  - C. Execute a consent to extend the statutory period for assessment or collection of a tax
  - D. Execute a closing agreement under IRC §7121
  - E. Provide representation
6. **Relationship to Tax Information Authorization (TIA).** A TIA is a document signed by the taxpayer authorizing a representative to receive or inspect confidential tax information in a specified matter. A TIA is required from the taxpayer in order that a taxpayer's representative may receive or inspect confidential tax information in a matter. If the taxpayer's representative has filed a power of attorney with respect to one or more of the matters specified in paragraph (5) above, he or she will be entitled to receive or inspect confidential information in the same matter without being required to file a separate tax information authorization. A tax information authorization is not required of a taxpayer's representative at a conference which is also attended by the taxpayer. Other instances in which a TIA is not required are listed in 26 C.F.R. § 601.502(c).
7. **When Power of Attorney or Tax Information Authorization Must Be Filed.** One copy of a power of attorney must be filed in each office of the IRS in which the representative, in connection with a matter in practice before the Service, desires to perform one or more of the acts enumerated in (5) above. If a power of attorney with respect to the matter has not been filed with the IRS, one copy of a tax information authorization must be filed in each office of the IRS in which the representative, in connection with the matter under consideration, receives or inspects confidential information.
8. **Practice by Correspondence.** If a representative desires to represent a taxpayer through correspondence with the

IRS, such representative must submit a power of attorney, including the declaration of representative and any other required statement(s), even though no personal appearance is contemplated.

9. **Formal Requirements for Powers of Attorney.** The use of technical language in the preparation of a power of attorney is not necessary, but the instrument must include the information required by section 601.503 of the Conference and Practice Requirements, including a clear expression of the taxpayer's intention as to the scope of the authority of the representative and specify the tax matter to which the authority relates. A power of attorney may relate to more than one matter. If the taxpayer wishes to authorize his or her representative to perform one or more of the acts set forth in paragraph (5) above, the power must clearly specify which acts the representative is authorized to perform. Where the customary Form 2848 is supplied, the form itself specifies that certain of these acts are authorized in the absence of a deletion by the taxpayer.
10. **Certification of Copies.** The IRS will accept either the original or a copy of a power of attorney. A copy of a power of attorney received by fax will also be accepted.
11. **Bypass.** When a taxpayer's representative unreasonably delays or hinders an examination, collection, or investigation, Service personnel may seek authorization from their manager to contact the taxpayer directly. Bypass is not to be invoked lightly but may be considered when a representative fails to furnish, after repeated requests, nonprivileged information necessary to the examination, collection, or investigation. If bypass is authorized, the case file will be documented with sufficient facts to show how the examination, collection, or investigation was being delayed or hindered, and written notice of such permission, briefly stating the reason why it was granted, will be given to the representative and the taxpayer. See Treas. Reg. § 601.506(b); see also section 7521(c); H. Conf. Rep. 100-1104 at 213-14 (1988), *reprinted in* 1988 U.S.C.C.A.N. 5048, 5273-74.
12. **Changing Representatives and Authority.** In any case in which there has been filed a power of attorney, a new power of attorney must be filed, if, thereafter, with respect to the same matter, the taxpayer desires to:
  - A. Add or reduce the number of representatives authorized to perform one or more of such acts
  - B. Revoke the authority granted to a representative and to authorize a new representative to perform one or more of such acts
  - C. Change the authority granted to a representative
13. **Notices to be Given to Recognized Representative.** A notice or other written communication (or copy thereof) required or permitted to be given to a taxpayer in any matter before the IRS, shall, unless restricted by the taxpayer, be given to the taxpayer's recognized representative.



14. **Delivery of Checks.** A check drawn on the United States Treasury will be mailed to the recognized representative of a taxpayer, provided that a power of attorney is filed containing specific authorization for this to be done.

**Exhibit 39.4.1-1 (08-11-2004)**

**Model Isolation Statement for Firms Practicing Before the Service (personal and substantial participation)**

**Director, Office of Professional Responsibility  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, DC 20224**

Re:	John Smith Private Letter Ruling Offer in Compromise Frank Jones Estate Smith and Jones Tax Shelter		

Dear Sir:

This letter is to confirm that the above matters being handled by this firm are matters in which \_\_\_\_\_ participated personally and substantially during Government service. The firm will implement the following permanent screening measures, in accordance with section 10.25(c) of Treasury Department Circular No. 230, with respect to the above matters:

- |   |
|---|
| (1) no personnel of the firm or anyone acting on behalf of the firm will discuss these matters with _____ or in his/her presence; |
| (2) he/she will have no access to any files or documents concerning the above matters; and  |
| (3) no aid or assistance will be accepted from him/her directly or indirectly in these matters.                                   |
| — <i>OPTIONAL PARAGRAPH</i> —   |

In addition, in accordance with [state Rule of Professional Conduct], he/she will not share in any fees received by the firm with respect to these matters.<sup>1</sup>

We declare under penalty of perjury that the foregoing is true and correct. Executed on (date).

			(FIRM NAME)
			By: _____
[Typed name of former employee] [under oath or affirmation]			[Typed name of member of firm] [under oath or affirmation]

<sup>1</sup> This **optional language** is not required under the Treasury practice regulations. it is included for the convenience of attorneys in jurisdiction in which rules of professional conduct prohibit the receipt of compensation directly related to the fee in the matter in which the attorney is disqualified. See Rule 1.11(a) of the ABA Model Rules of Professional Conduct and Comment (5) thereto.

[More Internal Revenue Manual](https://www.irs.gov/irm/part39/irm_39-004-001.html)

[https://www.irs.gov/irm/part39/irm\\_39-004-001.html](https://www.irs.gov/irm/part39/irm_39-004-001.html)