

What Consumers Need to Know about Changing Rules for Tax Preparers

The IRS and Congress have been making changes to the laws tax preparers must follow. Those laws are summarized in IRS Circular 230. The most recent revision to those regulations address written and electronically mailed advice given to taxpayers. The changes are part of the IRS's efforts to promote ethical tax practice and curb abusive tax-avoidance programs. It is important for you to know how this impacts communications between you and a tax preparer in the preparation of your income tax return.

The recent changes to Circular 230 address communications with clients about federal tax matters. Those changes focus on determining when a client can rely on a preparer's advice for protection from IRS penalties and for understating your tax liability.

When addressing federal tax matters, a preparer must determine if a tax matter has a principal or significant purpose of tax avoidance or evasion. If the principal purpose of the transaction being analyzed is tax avoidance or evasion, and the transaction is not within the intent of the law, then an opinion must be drafted in a specified fashion to protect you from penalties. If the purpose is only "significant," as defined in the regulations, in many cases you must be given an opinion on the transaction or notified that you cannot rely on the tax preparer's advice for the purposes of penalty protection. A tax opinion is very time consuming to research and write and it is therefore fairly expensive. As a result, in "significant purpose" cases you will see what is called "opt-out" language on written advice that is similar to this:

Any U.S. tax advice contained in this (electronic) mail communication was not intended or written to be used, nor can be used, by any recipient of this communication for the purpose of avoiding penalties that might be imposed pursuant to the Internal Revenue Code or U.S. Treasury Regulations, or any other state or local law or regulation.

A few years ago, Congress and the IRS issued an additional rule change regarding how income tax returns must be prepared. That rule change required documentation of any circumstance where there are different ways to treat transactions for federal tax purposes. In simple terms, that law states that preparers cannot sign a return if it contains a tax position that does not have a realistic possibility of being sustained on audit.

CPAs have always adhered to the American Institute of Certified Public Accountants Statements on Standards for Tax Services and the law. We will continue to do so because it is the standard that represents the right thing to do and the right level of service for clients. Please call your CPA if you have any questions.