

# TAX LESS TIPS

CPA Protector Plan's Risk Management News Letter

## IRS Amends Regulations for Written Tax Advice: Say Goodbye to the Circular 230 Disclaimer at the End of Emails

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Effective June 12, 2014, the IRS has announced revisions to Circular 230: Regulations Governing Practice Before the Internal Revenue Service that are designed, in part, to provide a more flexible standard for all written tax advice. The regulations require that practitioners base all written advice on reasonable factual and legal assumptions, exercise reasonable reliance and consider all relevant facts the practitioner knows or should know. The new Circular 230 can be found at <http://www.irs.gov/pub/irs-pdf/pcir230.pdf>.

The most publicized change is the elimination of Covered Opinion Rules in §10.35, which required practitioners providing covered opinions to make certain disclosures in marketed opinions, limited scope opinions and other opinions. What this means is that a disclaimer under Circular 230 is no longer required. The IRS has, in fact, indicated that continued use of disclaimers that imply that they are required or pursuant to Circular 230 or related regulations would be misleading. Those practitioners who continue to include disclaimers that indicate they are required by Circular 230 or the IRS will receive cease-and-desist letters.

The elimination of the disclaimer requirement was prompted in large part by widespread overuse, where the disclaimer would appear on all written correspondence regardless of whether it was a covered opinion. Although the new regulations do not prohibit the use of general disclaimers that do not reference Circular 230 or IRS regulations, it may be beneficial for firms to provide tailored disclosures based on the particular facts and circumstances of an engagement rather than a generalized broad disclaimer automatically attached to every correspondence without regard to whether the correspondence provides advice. A customized approach is also in keeping with the new standard governing written advice and can incorporate appropriate limitations based on factors such as the scope of engagement, the information available and the actual opinion provided.

That does not mean, however, that the use of all disclaimers should be discontinued. Firms should continue to use a "Confidentiality" disclosure to provide protection in the event of an inadvertent breach of confidential communications.

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