

# THE RISELING REPORT . . . . .

**EXCLUSIVELY FOR THE ESTATE PLANNING PROFESSIONAL**

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## **IRS CIRCULAR 230—IMPACT ON PRACTITIONERS**

Effective June 20, 2005, the Internal Revenue Service issued final regulations under Circular 230. New Proposed Regulations were also issued February 2006. What does this mean to the practitioner? Who does Circular 230 impact? How does Circular 230 apply? What penalties can be imposed? Here are some preliminary answers to those questions:

1. Circular 230 impacts anybody who practices before the IRS. The June 20, 2005 regulations make it clear this means attorneys, certified public accountants, enrolled agents or enrolled actuaries. Circular 230 does NOT appear to impose liability on a person who renders what could be considered legal or tax advice, but is not actually an attorney, certified public accountant, enrolled agent or enrolled actuary—but this is not 100% clear.

2. The Circular 230 standards apply to “covered opinions” written by a practitioner concerning one or more Federal tax issues arising from a “listed transaction and, in addition, any entity, plan or arrangement the principal purpose of which would be the avoidance or evasion of any tax imposed by the Internal Revenue Code and any entity, plan or arrangement a “significant purpose” of which is the avoidance or evasion of any tax imposed by the Internal Revenue Code.

3. From a practical standpoint: here are several situations when a practitioner would be considered making a “covered opinion”:

a. Recommending a family limited partnership or limited liability company whose principal purpose is to avoid or evade estate or gift taxes;

b. Creating or recommending an irrevocable trust which has its principal purpose the avoidance or evasion of gift taxes;

c. Correspondence by practitioners describing intentionally defective grantor trusts, grantor retained interest trusts, charitable lead trusts and charitable remainder trusts whose principal purpose is federal tax avoidance or evasion.

4. If the transaction is a “significant purpose transaction”, i.e., a transaction in which the avoidance or evasion of Federal tax is a “significant part” of the transaction as opposed to the “principal purpose”, you may need to consider not writing it as a reliance or marketed opinion. This is easy to accomplish by putting in the opinion what Circular 230 refers to as a “prominent disclosure” stating that the taxpayer may not rely upon it to avoid tax penalties. Due to the uncertainty as to what type of information Circular 230 applies to, you will notice a Circular 230 disclosure on this document.

5. Only the practitioners specifically mentioned in Circular 230 are (apparently) affected. BUT, lawyers, CPAs, enrolled agents or actuaries working at a bank, trust company, financial planning company, insurance company or financial services marketing group can be responsible for giving advice as outlined above.

6. If a practitioner does not comply with Circular 230, the practitioner may be censored, suspended or disbarred from practice before the IRS.

7. The recently proposed Regulations contain two new items—first, the IRS is making it clear it is going to impose financial penalties (in addition to suspension, etc.) and, “practice” before the IRS can include written opinions to your client!

### **BOTTOM LINE**

Circular 230 has the potential of applying in many circumstances and situations which might not be readily apparent to the estate planning practitioner. In addition, it has potential application to attorneys and CPAs employed outside the normal parameters of their respective professions.

## CIRCULAR 230 ANNOUNCEMENT

The following announcement is required by the Internal Revenue Service pursuant to 31 U.S.C. §330 relating to regulations concerning Circular 230. The information provided in this material is not intended as specific legal advice for any particular matter, but is intended only as educational, informative material. It is not the “principal purpose” of this material to avoid or evade any tax imposed by the Internal Revenue Code. However, such avoidance or evasion may be considered to be a significant purpose of this material. Accordingly,

**BE ADVISED THAT THIS MATERIAL IS NOT INTENDED OR WRITTEN BY THE AUTHOR TO BE USED, AND IT CANNOT BE USED BY ANY TAXPAYER, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER.**

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