



Pennsylvania Institute of Certified Public Accountants
Board of Finance and Revenue Proposed Regulations
Additional Background and Discussion
July 13, 2015

Pennsylvania Act 52 of 2013 made significant changes to the organizational structure and representation procedures of the Board of Finance and Revenue ("BF&R"). The legislation was drafted in response to years of public criticism regarding the BF&R's lack of independence from the Pennsylvania Department of Revenue ("DOR"), whose decisions were the subject of the appeal. Treasury worked in a bipartisan fashion with leaders of the business, legal and tax accounting communities throughout the lawmaking process.

Accountants' representation of taxpayers before various taxing authorities is well grounded in statutory and regulatory authority both at the state and federal levels. The Internal Revenue Service and other jurisdictions permit accountants to represent taxpayers in practice before the IRS and the Tax Court (upon successfully passing the Tax Court Exam). 5 U.S.C. § 500(c); T.C. Rule 201(a)(3). Additional guidance is found in IRS Circular 230, which also permits practice before the Internal Revenue Service by attorneys, Certified Public Accountants, and enrolled agents.

Section 10.3(b) of Circular 230 states that a "certified public accountant who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service by filing with the Internal Revenue Service a written declaration that the certified public accountant is currently qualified as a certified public accountant and is authorized to represent the party or parties."

Importantly, "practice before the Internal Revenue Service" is a defined term which "comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; 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; and representing a client at conferences, hearings, and meetings." See IRS Cir. 230 Sec. 10.2.

Act 52 does not limit the scope of accountants' representation before BF&R nor do the BFR's proposed regulations or interim operating rules. Specific commentary in response to the BF&R's proposed regulations suggests that certain practices by accountants before the BF&R may constitute the unauthorized practice of law. Additionally, certain comments suggest that the final regulations should limit the scope of representation by accountants before the BF&R. The enactment of Act 52 should not affect the scope of accountants' representation and it would not be within the scope of the BF&R's authority to limit such representation within their own regulations.