



## *UPL ADVISORY OPINION*

*UPL 05 -01*  
*(April 2005)*

### **Tax Payer Representative's Requests**

This is an Advisory Opinion regarding Rule 31 of the Rules of Supreme Court of Arizona regarding whether an attorney practicing outside the State of Arizona, who is not a licensed Arizona attorney, or CPA or IRS agent, is engaged in the unauthorized practice of law by submitting a request to the Arizona Department of Revenue for private tax payer ruling or information letter on behalf of an out-of-state client.

#### ***Issues:***

Is (i) an attorney practicing outside the State of Arizona and not admitted to practice law in Arizona, (ii) a Certified Public Accountant, or (iii) an enrolled agent before the Internal Revenue Service, who submits a request to the Arizona Department of Revenue for a private taxpayer ruling or an information letter on behalf of an out-of-state client engaged in the unauthorized practice of law in Arizona? No, as long as the attorney, CPA, or enrolled agent is not suspended or disbarred from practicing before the United States Internal Revenue Service.

#### ***Facts:***

The Arizona Department of Revenue (the “**Department**”) may issue a private taxpayer ruling (“**PTR**”) or an information letter (“**IL**”). A PTR interprets and applies Arizona tax laws to a particular set of facts set forth by the taxpayer requesting the ruling, and is issued only to that taxpayer with respect to a specific fact situation. An IL is a letter that responds to a written inquiry from a taxpayer, a taxpayer’s representative, or a business, trade, or industrial association or similar group. An IL is issued if: (a) the inquiry indicates a need for general information that requires written assistance or advice on tax principles or applications; or (b) the inquiry does not meet the requirements for issuance of a PTR, but the Department determines that written assistance or advisement is appropriate.

A request for a PTR must include: (a) the requesting taxpayer’s identifying information; (b) the signature of the requesting taxpayer or the taxpayer’s representative; (c) if the request is submitted by a representative, proof that the person is an authorized agent of the taxpayer; (d) a detailed description of the facts with respect to which the PTR is sought, including identification of all interested parties; (e) an analysis of the material facts included in any accompanying documents and their bearing on the issues raised in the request; and (f) if the taxpayer is advocating a particular conclusion, an explanation of the grounds for the taxpayer’s

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<sup>1</sup> **Opinions of the Committee are advisory in nature only and are not binding in any disciplinary or other legal proceedings. © State Bar of Arizona 2005**

proposed conclusion and the relevant legal authorities in support of the conclusion. Given the nature of an IL, similar requirements are not imposed for the issuance of an IL.

***Relevant Authority:***

Arizona Supreme Court Rule 31:

**Rule 31. Regulation of the Practice of Law**

**(a) Supreme Court Jurisdiction Over the Practice of Law**

1. *Jurisdiction.* Any person or entity engaged in the practice of law or unauthorized practice of law in this state, as defined by these rules, is subject to this court's jurisdiction.

2. *Definitions.*

A. "Practice of law" means providing legal advice or services to or for another by:

(1) preparing any document in any medium intended to affect or secure legal rights for a specific person or entity;

(2) preparing or expressing legal opinions;

(3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;

(4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or

(5) negotiating legal rights or responsibilities for a specific person or entity.

B. "Unauthorized practice of law" includes but is not limited to:

(1) engaging in the practice of law by persons or entities not authorized to practice pursuant to paragraphs (b) or (c) or specially admitted to practice pursuant to Rule 33(d); or

(2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state pursuant to paragraphs (b) or (c) or

specially admitted to practice pursuant to Rule 33(d), the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

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**(b) Authority to Practice.** Except as hereinafter provided in section (c), no person shall practice law in this state or represent in any way that he or she may practice law in this state unless the person is an active member of the state bar, and no member shall practice law in this state or represent in any way that he or she may practice law in this state, while suspended, disbarred, or on disability inactive status.

**(c) Exceptions.** Notwithstanding the provisions of section (b):

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13. In any administrative matter before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Corporation Commission, or any county, city, or town taxing or appeals official, a taxpayer may be represented by (1) a certified public accountant, (2) a federally authorized tax practitioner, as that term is defined in A.R.S. § 42-2069(D)(1), or (3) in matters in which the dispute, including tax, interest, and penalties, is less than \$5,000.00 (five thousand dollars), any duly appointed representative. A legal entity, including a governmental entity, may be represented by a full-time officer, partner, member or manager of a limited liability company, or employee, provided that: the legal entity has specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the legal entity, but secondary or incidental to other duties relating to the management or operation of the legal entity; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

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Arizona Revised Statutes section 42-2069(D)(1):

1. "Federally authorized tax practitioner" means an individual who is authorized under federal law to practice before the United States internal revenue service if the practice is subject to federal regulation under 31 United States Code § 330. Federally authorized tax practitioner includes any person who is engaged in practice with one or more federally authorized tax

practitioners and who is subject to the same standards of practice and ethics requirements as a federally authorized tax practitioner.

31 United States Code section 330:

- (a) Subject to section 500 of title 5, the Secretary of the Treasury may -
  - (1) regulate the practice of representatives of persons before the Department of the Treasury; and
  - (2) before admitting a representative to practice, require that the representative demonstrate -
    - (A) good character;
    - (B) good reputation;
    - (C) necessary qualifications to enable the representative to provide to persons valuable service; and
    - (D) competency to advise and assist persons in presenting their cases.
- (b) After notice and opportunity for a proceeding, the Secretary may suspend or disbar from practice before the Department a representative who -
  - (1) is incompetent;
  - (2) is disreputable;
  - (3) violates regulations prescribed under this section; or
  - (4) with intent to defraud, willfully and knowingly misleads or threatens the person being represented or a prospective person to be represented.

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Treasury Department Circular No. 230 Rev., Part 10 - Practice before the Internal Revenue Service.

**Section 10.0. Scope of Part.**

This part contains rules governing the recognition of attorneys, certified public accountants, enrolled agents, and other persons representing taxpayers

before the Internal Revenue Service. Subpart A of this part sets forth rules relating to the authority to practice before the Internal Revenue Service . . . .

. . . .

**Section 10.2. Definitions.**

As used in this part, except where the text clearly provides otherwise:

(a) *Attorney* means any person who is a member in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(b) *Certified public accountant* means any person who is duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

. . . .

(e) *Practitioner* means any individual described in paragraphs (a), (b), (c), or (d) of § 10.3.

. . . .

**Section 10.3. Who may practice.**

(a) **Attorneys.** Any attorney 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 he or she is currently qualified as an attorney and is authorized to represent the party or parties on whose behalf he or she acts.

(b) **Certified public accountants.** Any 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 he or she is currently qualified as a certified public accountant and is authorized to represent the party or parties on whose behalf he or she acts.

(c) **Enrolled agents.** Any individual enrolled as an agent pursuant to this part who is not currently under suspension or disbarment from practice before the Internal Revenue Service may practice before the Internal Revenue Service.

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*Discussion:*

**Is (i) an attorney practicing outside the State of Arizona and not admitted to practice law in Arizona, (ii) a Certified Public Accountant, or (iii) an enrolled agent before the Internal Revenue Service, who submits a request to the Arizona Department of Revenue for a private taxpayer ruling or an information letter on behalf of an out-of-state client engaged in the unauthorized practice of law in Arizona? No, as long as the attorney, CPA, or enrolled agent is not suspended or disbarred from practicing before the United States Internal Revenue Service.**

Any inquiry into what legal services may or may not be provided by a person not admitted to practice law in the State of Arizona must begin with reviewing the Arizona Supreme Court's 2003 definition of what is "the practice of law" as set forth in Arizona Supreme Court Rule 31(a)2.A. In brief, "practicing law" in Arizona includes preparing any document through any medium for filing before any administrative agency for a specific person or entity. Only members of the State Bar of Arizona and certain specific categories of non-lawyers are authorized by the Supreme Court to practice law in Arizona.

The preparation of a request to the Arizona Department of Revenue for a private taxpayer ruling or an information letter on behalf of another person clearly constitutes the practice of law, as defined in Arizona Supreme Court Rule 31(a)2.A. However, 26 exemptions from the general restriction of the right to practice law in the State of Arizona to members of the State Bar of Arizona are set forth in Arizona Supreme Court Rule 31(c), including an exemption in paragraph 13 of Rule 31(c) for certified public accountants and other federally authorized tax practitioners to represent a taxpayer before, amongst others, the Arizona Department of Revenue.

Federally authorized tax practitioners are defined in Treasury Department Circular No. 230 Rev., Part 10 - Practice before the Internal Revenue Service, which is promulgated pursuant to the authority granted to the United States Secretary of the Treasury by section 330 of Title 31 of the United States Code, to include:

(a) attorneys who are members in good standing of the bar of the highest court of any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, and who are not currently under suspension or disbarment from practice before the Internal Revenue Service;

(b) certified public accountants who are duly qualified to practice as a certified public accountant in any State, territory, or possession of the United States, including a Commonwealth, or the District of Columbia, and who are not currently under suspension or disbarment from practice before the Internal Revenue Service; and

(c) enrolled agents who have qualified to practice before the Internal Revenue Service in compliance with the requirements of Circular 230 and who are not currently under suspension or disbarment from practice before the Internal Revenue Service.