
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 12265, Columbia, South Carolina 29211
Website Address: <http://www.sctax.org>

SC REVENUE PROCEDURE #11-1

- SUBJECT:** Tax Practice before the South Carolina Department of Revenue, Ethical Responsibilities and Sanctions for Practitioners
- EFFECTIVE DATE:** Applies to all periods under statute.
- SUPERSEDES:** S.C. Revenue Ruling 04-3, S.C. Revenue Procedures 92-6, 92-4, and all previous documents and any oral directives in conflict herewith.
- REFERENCES:** S.C. Code Ann. Section 12-60-90 (Supp. 2010)
S.C. Code Ann. Section 12-54-240 (2000, Supp. 2010)
United States Treasury Department Circular No. 230, Title 31, Code of Federal Regulations, Subtitle A, Part 10 (Published September 26, 2007)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (Supp. 2010)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Background Information:

The South Carolina Revenue Procedures Act, Chapter 60, Title 12, provides procedures for seeking refunds of taxes and appealing assessments issued by the Department or property tax assessments issued by local tax authorities.¹ Included in the Revenue Procedures Act is Section 12-60-90 of the South Carolina Code of Laws (“Code”), which addresses who may represent taxpayers before the South Carolina Department of Revenue (“Department”) and local tax authorities in the administrative tax process. Code

¹ Under Code Section 12-60-30(27), “tax” or “taxes” means taxes, licenses, permits, fees, or other amounts, including interest, regulatory and other penalties, and civil fines, imposed by this title, or subject to assessment by the department.

Section 12-60-90 also provides ethical responsibilities for tax practitioners to follow in their tax practice through the adoption of certain provisions of United States Treasury Department's Circular 230 ("Circular 230")². Circular 230 provides information concerning who may practice before the Internal Revenue Service and also contains ethical standards that tax practitioners must follow in federal tax matters. Lastly, both Section 12-60-90 and Circular 230 address sanctioning or disbaring persons who are authorized to represent taxpayers before the Department.

References to Circular 230 mean the United States Treasury Department Circular 230 as revised through the date provided for in the definition of the Internal Revenue Code in Code Section 12-6-40(A). Code Section 12-60-90(F)(1). For purposes of Code Section 12-60-90, the provisions of Circular 230 that are adopted in Code Section 12-60-90 are applicable to a tax practitioner's South Carolina tax practice. See Code Section 12-60-90(F).

This revenue procedure addresses the following matters:

Representation of Taxpayers During the Administrative Tax Process

Other Dealings with the Department

Ethical Responsibilities of Tax Practitioners

Sanctions Against Tax Practitioners for Incompetent or Disreputable Behavior

Although Code Section 12-60-90 addresses representation before both the Department and local taxing authorities, this revenue procedure only addresses representation before the Department in connection with matters before the Department including alcoholic beverage licensing matters.

Questions and Answers:

Representation of Taxpayers in the Administrative Tax Process

1. What is the "administrative tax process"?

A. Pursuant to Code Section 12-60-90 and for purposes of this revenue procedure, the "administrative tax process" includes matters connected with the presentation to the Department and its employees relating to a taxpayer's rights, privileges or liabilities under laws, regulations, and rules administered by the Department. These presentations include: (a) the preparation and filing of documents with the Department; (b) correspondence and communication with the Department; and (c) representing clients at conferences and meetings with the Department. It does not include representation in matters before the Administrative Law Court or the courts. Code Section 12-60-90(A).

² Treasury Department Circular No. 230 may be found on the Internal Revenue Service's website at www.irs.gov.

For a practitioner to represent a taxpayer during the administrative tax process, he must have a valid Power of Attorney signed by the taxpayer³, unless the taxpayer is present and indicates the practitioner is authorized to represent him.

2. Who may represent taxpayers before the Department during the administrative tax process?

A. The following individuals may represent taxpayers before the Department during the administrative tax process:

(a) Attorneys and certified public accountants, including those licensed in other states. They must be in good standing with their licensing bodies to represent persons before the Department. Circular 230 §10.3(a) and (b).

(b) Enrolled agents. An enrolled agent is a person who has demonstrated special competence in federal taxation by passing a written examination administered by the Office of Professional Responsibility of the Internal Revenue Service (“IRS”) or through employment with the IRS. The Federal Office of Professional Responsibility should be contacted for more information about enrolled agent qualification. Circular 230 §10.3(c).

(c) Tax return preparers represent taxpayers by preparing and filing tax returns. A tax return preparer may also represent taxpayers at the initial examination level during an examination of a taxable year or period covered by a return prepared by the preparer. A “tax return preparer” is an individual who prepares and signs a taxpayer’s tax return as the preparer, or who prepares a tax return but is not required (by the instructions to the tax return or regulations) to sign the tax return. Circular 230 §10.7(c)(1)(viii). The initial examination level is any discussions with an auditor, property tax analyst, tax examiner or other staff person, not in a supervisory or management position at the Department and not part of the appeals, litigation, or policy functions of the Department. If a matter extends beyond the initial examination level, including referral of the matter to a supervisor, manager, or other person having supervisory or managerial authority, a return preparer can no longer represent a taxpayer before the Department, unless that preparer is otherwise authorized to represent the taxpayer.⁴

(d) Partners may represent their partnership. Circular 230 §10.7(c)(1)(iii).

(e) Corporate officers may represent their corporation. Circular 230 §10.7(c)(1)(iv).

³ A Power of Attorney and Declaration of Representative form, SC 2848, may be found on the Department’s website at www.sctax.org.

⁴ For example, a tax preparer licensed as a certified public accountant, is eligible to represent the taxpayer at all levels of the Department.

(f) Full-time employees may represent their employers. Circular 230 §10.7(c)(1)(ii),(iv) and (v).

(g) Individuals may represent themselves or a member of their immediate family. Circular 230 §10.7(a) and (c)(1)(i).

(h) State and local government tax officials and state and local government employees may represent their offices, agencies, or both. Code Section 12-60-90(B).

(i) Real estate appraisers who are registered, licensed or certified pursuant to Chapter 60, Title 40, may represent clients in matters limited to questions concerning the valuation of real property. Code Section 12-60-90(C)(2).

3. Are there any circumstances whereby an individual other than one of the above listed individuals may represent a taxpayer before the Department?

A. Yes. The Department Director under conditions he deems appropriate may authorize an individual who is not otherwise authorized to represent taxpayers before the Department to represent a taxpayer before the Department. Code Section 12-60-90(C)(1) and Circular 230 §10.7(d).

Other Dealings with the Department

4. Other than those individuals authorized to represent a taxpayer before the Department, who may a taxpayer have present at meetings and conferences with the Department?

A. A taxpayer may have anyone he authorizes at meetings or conferences with the Department. However, these individuals may not represent the taxpayer before the Department (*i.e.*, make arguments, state positions, or make decisions on behalf of the taxpayer) except as permitted by Question & Answer #2. A taxpayer may also have an individual present as a witness. The Department may remove an individual from a meeting or conference if the presence of the individual is disruptive or if an individual who is not eligible to represent a taxpayer before the Department begins explaining a matter or giving advice to the taxpayer or begins advocating on behalf of the taxpayer. Individuals attending any meeting or conference where confidential information may be discussed may listen to conversations between the taxpayer and the Department if the taxpayer is present and consents. At any time, the taxpayer may request any individual attending on the taxpayer's behalf to leave any meeting or conference.

Any confidential tax information pertaining to a taxpayer that a person may obtain, must be kept confidential by that individual as provided in Code Section 12-54-240.

5. Who may supply information to the Department?

A. Anyone may provide information to the Department.

6. Who may receive confidential information concerning a taxpayer from the Department?

A. A taxpayer may ask for, and receive, his own confidential information. Anyone who holds a valid Power of Attorney⁵ executed by a taxpayer may receive confidential information of the taxpayer that the Power of Attorney authorizes the practitioner to receive. For example, a taxpayer may allow a practitioner to represent him as to income tax matters, but not sales tax matters or a taxpayer may have executed a Power of Attorney which limits the practitioner to only receiving specific confidential information or limits a practitioner to receiving information, but not representing the taxpayer before the Department. For example, the practitioner may receive copies of tax returns, but may not be authorized to receive the taxpayer's protest filed in connection with the matter or a practitioner may be authorized to receive information, but may not be authorized to represent the taxpayer before the Department concerning the matter. Note, a taxpayer may only execute a power of attorney that provides for representation of the taxpayer to someone who may represent the taxpayer in accordance with Question and Answer #2 above.

Further, anyone may receive confidential information about a taxpayer (even if that individual may not be authorized to represent the taxpayer before the Department) if the taxpayer is present and authorizes the individual to receive the information.⁶

Ethical Responsibilities of Tax Practitioners

7. What duties and responsibilities must a practitioner comply with in order to maintain good standing to represent taxpayers during the administrative tax process?

A. South Carolina has adopted the provisions of Circular 230 relating to duties and responsibilities placed on practitioners that are contained in Circular 230's Subpart B, §§10.20 -10.24 and §§10.27 – 10.34. For the purposes of this revenue procedure, a

⁵ Please note, even if a practitioner submits a Power of Attorney form and requests the Department to send originals or copies of all notices and correspondence concerning the taxpayer to that practitioner, the taxpayer will still receive these documents and the practitioner will generally **not** be sent the original or a copy. In certain instances, the practitioner may arrange with the person handling the taxpayer's tax matter for the Department, to provide copies of notices and correspondence to the practitioner.

⁶ Any confidential tax information pertaining to a taxpayer that a person may obtain, must be kept confidential by that individual as provided in Code Section 12-54-240. Code Section 12-54-240 governs the release of confidential taxpayer information without the consent of the taxpayer. Although there are exceptions, generally a court order is required to obtain such information. Service of a subpoena on the Department is not sufficient to obtain confidential taxpayer information.

practitioner is someone who is authorized to represent a taxpayer before the Department. See, Code Section 12-60-90. These duties and restrictions include, but are not limited to, the following.

A practitioner must:

- (a) furnish to the Department any records or information requested by the Department unless the practitioner believes in good faith and on reasonable grounds that the information is privileged. Circular 230 §10.20(a)(1).
- (b) not interfere or attempt to interfere with the lawful attempts of the Department to obtain records or information unless the practitioner believes in good faith and on reasonable grounds that the information is privileged. Circular 230 §10.20(c).
- (c) advise the taxpayer promptly of any noncompliance, error or omission made by the taxpayer and of the consequences of such action. Circular 230 §10.21.
- (d) exercise due diligence (1) in preparing, approving and filing tax returns and other documents filed with the Department and (2) in determining the correctness of oral or written representations made by the practitioner to the taxpayer or the Department or by the taxpayer to the Department. Circular 230 §10.22(a).
- (e) not unreasonably delay the prompt disposition of a matter before the Department. Circular 230 §10.23.
- (f) not knowingly, directly or indirectly, accept assistance from, or assist, a person who has been disbarred or suspended from practice before the Department if the assistance relates to a matter that is part of practice before the Department. Circular 230 §10.24(a).
- (g) promptly return a taxpayer's records at the request of the taxpayer unless the practitioner is otherwise allowed to retain the records in accordance with §10.28 of Circular 230. Circular 230 §10.28.
- (h) not advise a taxpayer to take a position on a paper or document submitted to the Department if the position is frivolous. Circular 230 §10.34(b)(1).
- (i) not advise a taxpayer to submit a document or other paper to the Department if:
 - (1) the purpose of the submission is to delay or impede the administration of the laws;
 - (2) the submission is frivolous; or
 - (3) the submission contains information that demonstrates an intentional disregard of a rule or regulation unless the practitioner also advises the taxpayer to submit a good faith challenge to the rule or regulation.Circular 230 §10.34(b)(2).

(j) inform the taxpayer of any penalties that are reasonably likely to apply (1) with respect to a position taken on the tax return if the practitioner advised the taxpayer on the position or prepared or signed the return, or (2) as to any other document, affidavit, or other paper submitted to the Department. The practitioner must also inform the taxpayer of any opportunity to avoid any penalties by disclosure and the requirements for disclosure. Circular 230 §10.34(c).

(k) make reasonable inquiries concerning a matter if a practitioner suspects that information furnished by the taxpayer is incorrect, incomplete, or inconsistent with an important fact or another factual assumption. Circular 230 §10.34(d).

Additionally, a practitioner must comply with all the rules relating to conflicts of interest that are contained in §10.29 of Circular 230.

Code Section 12-60-90 and §§10.20 -10.24 and §§10.27 – 10.34 of Circular 230, as well as any professional ethical rules of the practitioner's profession, should be consulted to make sure that the practitioner is complying with all appropriate duties and restrictions.

8. May a practitioner charge a contingent fee in connection with a matter before the Department?

A. A practitioner should consult §10.27 of Circular 230 for rules relating to contingent fees and be aware that the provisions of Circular 230 are subject to change. Under the current provisions of Circular 230, as a general rule, a practitioner may not charge a contingent fee in connection with a matter before the Department. Circular 230 provides that a "contingent fee" is any fee that is based, in whole or in part, on whether or not a position taken on a tax return or other filing avoids challenge by the Department or is sustained by the Department or in litigation. A contingent fee includes a fee that is based on a percentage of the refund reported on a return, that is based on a percentage of the taxes saved, or that otherwise depends on the specific result attained. A contingent fee also includes any fee arrangement in which the practitioner will reimburse the taxpayer for all or a portion of the taxpayer's fee in the event that a position taken on a tax return or other filing is challenged by the Department or is not sustained, whether pursuant to an indemnity agreement, a guarantee, rescission rights, or any other arrangement with a similar effect.

A matter before the Department includes tax planning and advice, preparing, filing, or assisting in preparing or filing, returns or claims for refunds, and all matters involving a presentation to the Department or its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws that are administered by the Department. Presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Department, or rendering written advice with

respect to any entity, transaction, plan or arrangement, and representing clients at conferences and meetings. See Circular 230, §10.29.

A practitioner may charge a contingent fee in connection with certain limited matters:

- (a) for services rendered in connection with the Department's examination of, or challenge to, (a) an original tax return, or (b) an amended tax return or claim for refund or credit of taxes where the amended return or claim for refund or credit is filed within 120 day of the taxpayer's receiving a written notice of the examination of, or a written challenge to, the original tax return;
- (b) for services rendered in connection with a claim for credit or refund of taxes filed solely in connection with the determination of statutory interest or penalties assessed by the Department; or
- (c) for services rendered with respect to any judicial proceeding involving any tax matter under Title 12 or any other tax matter administered by the Department.

Sanctions Against Practitioners for Incompetent or Disreputable Behavior

9. What disciplinary actions may the Department take if a practitioner engages in unethical conduct?

A. The Department Director may censure (a censure is a public reprimand), suspend, or disbar a practitioner from practice before the Department if the practitioner: (a) is shown to be incompetent or disreputable (incompetent and disreputable conduct is defined in §10.51 of Circular 230); (b) fails to comply with any part of §§10.20 through 10.24 or §§10.27 through 10.34 of Circular 230 as discussed above; or (c) in any manner, with intent to defraud, willfully and knowingly misleads or threatens a client or a prospective client by word, circular, letter or advertisement. If the Department seeks to take such action, the Department will notify the practitioner and give him the opportunity to appeal the matter by filing a written protest in accordance with the Revenue Procedures Act, Chapter 60, Title 12.

In addition, if action is taken, the Department may notify the Internal Revenue Service as well as any appropriate licensing authorities of its actions. The Department may also impose a monetary penalty on the practitioner. If the practitioner was acting on behalf of an employer or any other firm or entity in connection with the conduct giving rise to the penalty, the Department may impose a penalty on the employer, firm or entity if the employer, firm, or entity knew or reasonably should have known of the conduct of the practitioner. Code Section 12-60-90(D).

10. Is there a limit on the monetary penalty that may be imposed on a practitioner?

A. Yes. The monetary penalty may not exceed the gross income derived, or to be derived from, the conduct giving rise to the penalty. The penalty may be in addition to, or instead of, censure, suspension, or disbarment of the practitioner. Code Section 12-60-90(D). The imposition of a penalty under this section does not preclude the application of a penalty or fine on the practitioner under another section of the law. Nor does it preclude additional civil or criminal sanctions against the practitioner.

11. May a practitioner who has been disbarred be reinstated to represent taxpayers before the Department?

A. Yes. The Department may review a petition for reinstatement as provided in §10.81 of Circular 230 after five years from the date of disbarment of the practitioner. Reinstatement will only be granted if the Department Director is satisfied that the practitioner is not likely to conduct himself contrary to the provisions of Circular 230 and that granting the reinstatement is not contrary to the public interest. Code Section 12-60-90(D) and Circular 230 §10.81.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/James F. Etter

James F. Etter, Director

November 4, 2011
Columbia, South Carolina