

Larry's Tax Law

IRS Disbars CPA/Attorney

By Larry Brant on 5.8.14 | Posted in Circular 230

Acts of dishonesty can cost a tax practitioner his or her ability to practice before the IRS. Charles M. Edgar (“Edgar”), formerly a licensed CPA and attorney in Massachusetts, recently learned this lesson.

On May 1, 2014, the Service issued a news release (“IR-2014-58”), announcing the disbarment of Edgar. While the saga of Edgar is long and somewhat convoluted, it illustrates a significant point—failure to act honestly in matters before the IRS constitutes a violation of Circular 230. It will cost you severely.

Background

The Secretary of Treasury has express authority to regulate practice before the IRS, including the power to suspend or disbar an individual from practice before the Service for failing to comply with Circular 230. In such instances, the practitioner must be provided notice and an opportunity for a hearing before an administrative law judge.

Circular 230 grants the Director of the Office of Professional Responsibility authority to bring proceedings to suspend or disbar practitioners from practice before the Service. Generally, an administrative law judge, not the Office of Professional Responsibility, determines the appropriate sanction, if any, taking into consideration all relevant facts and circumstances.

Circular 230 specifically provides that a practitioner may be sanctioned for giving “false or misleading” information to the Treasury or any officer or employee thereof. For this purpose, “information” means any facts or statements made in testimony, on federal tax returns, financial statements, and other documents or statements (written or oral).

Circular 230 also provides that a practitioner may be sanctioned if he or she is disbarred or suspended from practice as an attorney, CPA, PA, or actuary.

Facts

Edgar was a CPA, but his license was revoked in 2010 by the Massachusetts Board of Registration in Public Accountancy, in part, due to a 1995 felony conviction for knowingly making false statements to the government and for mail fraud. In 2011, Revenue Agent Adrienne Howley contacted Edgar in regard to an on-going audit of a corporation he previously had been designated as the authorized representative. She apparently told Edgar

that the Service was going to audit the corporation's shareholders. The agent specifically asked Edgar if he was going to represent the shareholders in the audit. Edgar told Ms. Howley that he would be representing the shareholders, and he would be submitting powers of attorney to memorialize the representation.

About six months following his disbarment as a CPA, Edgar submitted a separate IRS Form 2848, Power of Attorney and Declaration of Representative, for each of the corporation's two shareholders. On the Forms 2848, which are signed under the penalty of perjury, Edgar represented he was a CPA duly qualified to practice in Massachusetts.

After receiving the Forms 2848, Agent Howley conducted an on-line search, a routine practice, to determine if the representative held a valid license. The search revealed Edgar's CPA license had been revoked on December 23, 2010. Consequently, Agent Howley referred the matter to the Office of Professional Responsibility.

After an investigation, the Office of Professional Responsibility sought to discipline Edgar. The matter ended up in a hearing before Administrative Law Judge Walter J. Brudzinski. At hearing, several bad facts came out, including:

- Edgar had been convicted of a felony for making false statements and for mail fraud. As a result, he lost his CPA license;
- Edgar filed with the IRS Forms 2848 representing he was a CPA when, in fact, his license had been revoked months earlier;
- Edgar never told Agent Howley he had been disbarred;
- Edgar never told the corporate taxpayer or its shareholders he had been disbarred;
- In Edgar's answer to the Office of Professional Responsibility's complaint, seeking discipline, he denied his CPA license had been revoked;
- At hearing, Edgar appeared to have a memory lapse in that he could not remember his conversations with the auditor; and

- At hearing, Edgar at one point claimed he did not sign or submit the Forms 2848 to the IRS. Rather, he claimed one of the shareholders had done so. Unfortunately, it was clear from the evidence submitted at hearing that the signatures on the forms were, in fact, his signatures.

Conclusion

The Administrative Law Judge concluded Edgar demonstrated “a pattern of conduct and occurrences that demonstrate [he] is not fit to practice before the IRS.” His “lack of truthfulness, is troubling and bears directly on his fitness to represent taxpayers before the IRS.”

Edgar’s disbarment from practice before the IRS clearly places him on the bench. If, however, he can show he is rehabilitated in terms of fitness to practice, he could re-apply to practice before the Service after five (5) years have elapsed. Given his track record, that may be an uphill battle.

Karen L. Hawkins, Director of the Office of Professional Responsibility, stated “[t]he representations made by practitioners on powers of attorney forms are not mere procedural niceties. The forms are signed under the penalty of perjury. Claiming a nonexistent licensure status puts the IRS in the position of potentially discussing taxpayer information with an unauthorized or unqualified person.” Ms. Hawkins went on to say: “[w]e will not tolerate that type of abuse of the tax administration process by anyone.”

Caution is advised. When dealing with the Service, other government agencies, clients and others, practitioners must act with honesty and integrity.

Tags: Charles M. Edgar, Disbarment, Tax Procedure