Book Review: The Circular 230 Deskbook, by Blatmachr, Gans and Rios

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These days, Circular 230 permeates many aspects of a tax advisor's daily life. After all, it sets forth standards of conduct with which practitioners must comport in providing federal tax advice, or be faced with disciplinary action. While Circular 230 has been around for nearly 90 years, recent amendments have touched all federal tax practitioners, and arguably lots of other people too.

In fact, we are reminded of this every time we see the pervasive Circular 230 language in emails or other written communications. In today's world of enhanced tax practitioner responsibilities and overlapping standards of care imposed by Circular 230, Treasury regulations and professional regulatory bodies (*e.g.*, the ABA), the standards applicable to the provision of tax advice are anything but clear-cut. For this and other reasons, the Circular 230 Deskbook by Blatmachr, Gans and Rios is a practical book that belongs on (or nearby) nearly every tax practitioner's desk.

The Deskbook will act as a map to help navigate through critical issues such as the following:

- Which taxpayer-practitioner communications rise to the level of advice?
- What are the different standards of conduct required between oral and written advice; and, preliminary and final advice?

The Deskbook will also help a practitioner assess the consequences when a taxpayer files a return based on arguments that do not have a realistic possibility of success, but are not frivolous; or, the significance of a taxpayer having a tax position based on substantial authority, but a position that is not likely to prevail. While a comprehensive answer is beyond the scope of this review, the key issues involve penalties, and the possibility of avoiding such penalties by adequate disclosure.

The authors state that the Deskbook is designed primarily as a reference book, and, indeed, I have found it to be a rich reference. The book is divided into four chapters. The first chapter addresses the deference courts provide to government interpretations of the law. This should be relevant to practitioners in determining what weight to give to certain Treasury pronouncements.

The second chapter contains an overview of selected penalties imposed under the Internal Revenue Code. There is a very concise discussion regarding when penalties apply, and the standards that must be met to avoid them. This is a discussion many practitioners will likely find helpful. The third chapter addresses disclosure of Reportable Transactions and list maintenance requirements imposed by the Code. The fourth chapter, the main focus of the book, is an in-depth analysis of the requirements under Circular 230, including the heightened duties imposed on practitioners when providing written federal tax advice (*e.g.*, a practitioner may not make unreasonable factual or legal assumptions; nor may a practitioner unreasonably rely on representations or statements from third parties).

A Picture Is Worth a Thousand Words

Given that I am a sucker for flowcharts and diagrams, I enjoyed the various flowcharts and diagrams included in the Deskbook. For instance, Appendix D is a Circular 230 Decision Tree which will assist in determining which parts of Circular 230 apply to a practitioner's communications.

For written advice, there is a checklist to assist in identifying applicable standards. And, for "Covered Opinions," there is a chart to assist in identifying applicable requirements and exceptions. Last, but certainly not least, there is a chart summarizing the criteria applicable to the imposition of the negligence penalty and related defenses.

The CIRCULAR 230 DESKBOOK not only is a comprehensive reference book, but the diagrams and flowcharts are a quick reference reminder of issues that apply to daily communications provided by practitioners. This book certainly should be near the top of every practitioner's list of key library reference guides and daily practice books. It is available for $235 from Practicing Law Institute (*www.pli.edu*, 800-260-4PLI).