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THE TAX LAWYER

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### Can Lawyers or Accountants Do Your Taxes on Contingency?

If an accountant says his fee for preparing your return is a percentage of what he saves you, should you agree? No. Contingent fees based on tax savings are generally not allowed by the IRS.

Tax disputes and litigation are a different matter. If you face a tax dispute, can you hire a contingent fee tax lawyer or accountant to handle it? It depends on the nature and timing of the tax dispute.

The majority of audits and administrative proceedings are handled on an hourly or fixed fee basis. However, with court cases, contingent fees can sometimes make sense for the tax lawyer and the clients.

A portion of the Treasury Regulations known as [Circular 230](#) regulates lawyers and accountants who practice before the IRS. In 2007, Circular 230 was revised to generally prohibit attorneys, CPAs and other tax practitioners from doing tax work on a contingent fee basis. But this prohibition has important exceptions.

Tax lawyers and accountants are **allowed** to do work on a contingent fee basis relating to IRS audits or challenges of original tax returns. That



means your accountant can't **prepare** your return for a contingent fee, but could handle an **audit** that way.

**Example:** The IRS proposes that you owe an extra \$100,000. Your accountant or tax lawyer agrees to handle it for 40% of what he saves you. If he saves you \$100,000, you owe him \$40,000.

Contingent fees are generally OK in the case of amended tax returns too, although there are timing rules to observe. Tax practitioners may charge a contingent fee for services rendered in connection with any judicial proceeding arising under the Internal Revenue Code. Thus, tax litigation can be handled for a contingent fee.

Some question whether these restrictions on contingent fee work are fair or legal. In fact, a recent lawsuit against the IRS says contingent fees should be **allowed**. In [\*Ryan, LLC et. al.\*](#), Gerald D. Ridgely Jr. and his firm assert that these Circular 230 restrictions violate his First Amendment right to petition the government for a redress of grievances and his due process right to obtain a refund of taxes paid.

The suit claims the restrictions also violate Ridgely's right as a CPA to practice before the IRS. Ryan LLC and Ridgely are seeking a judgment declaring that the Circular 230 restrictions on contingent fee arrangements are unconstitutional. They also want a judgment declaring that the regulations exceed the Treasury's and the IRS's authority to regulate the conduct of tax practitioners.

Finally, they request a permanent injunction against the enforcement of the Circular 230 restrictions on contingent fee arrangements in the preparation and filing of claims for refund with the IRS.

For more, see:

[Ten Tips For Amending Your Tax Return](#)

[CPAs Need To Know When To Call In Tax Attorney](#)

[The Only Good Legal Fees Are Tax Deductible Legal Fees](#)

[HUGE Taxpayer Win: Supreme Court Tells IRS 3 Years To Audit Is PLENTY](#)

[Filing Taxes? Beware Sharp Increase In Audit Rates](#)

[Tax Lawyer Son's Help, Priceless?](#)

[Can Execs Deduct Legal Fees Above-The-Line?](#)

[Michael Jackson Death Doctor Can Deduct His Legal Fees](#)

[Does Going On Return Filing Extension Increase IRS Audit Risk?](#)

[What's Your IRS Audit Risk?](#)

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