

Circular 203 Regulations

July 27, 2005

Over the past few years, the Internal Revenue Service and the Treasury Department have put forth substantial efforts designed to curtail the use of "abusive" tax avoidance transactions. As part of these efforts, the Treasury Department recently issued regulations governing the standards for written tax advice rendered by attorneys and other tax professionals (the "Circular 230 Regulations").

Under the Circular 230 Regulations, written advice addressing federal tax issues must either: (i) meet the standards for "covered opinions," as set forth in the Circular 230 Regulations, or (ii) bear a legend stating that the written advice may not be relied upon for the purpose of avoiding federal tax penalties.

Prior to the issuance of these regulations, taxpayers generally could assert a "reasonable cause" defense when facing potential federal tax penalties if they reasonably relied on advice from an attorney or other tax professional regarding the tax consequences of a particular transaction or item. Now, unless the advice meets Circular 230's "covered opinion" standards, written advice from a tax professional alone may not be sufficient to avoid these penalties.

Written tax advice will meet the standards for "covered opinions" if the advice involves the review, investigation and evaluation of all relevant facts, assumptions and representations, the advice fully discusses all applicable legal authority and fully analyzes and provides a detailed conclusion for each and every federal tax issue possibly implicated by the transaction. The attorney or other tax professional giving the written tax advice and the client may agree to limit the scope of the written advice to certain issues, but if the written advice is limited in this manner, then the client may rely on the written advice to avoid federal tax penalties only for the issues specifically addressed.

In order to meet our obligations under the Circular 230 Regulations, all email and certain other written communications from Miller Canfield will bear a legend advising clients that they may not rely on any federal tax advice in the email or other written communication for the purpose of avoiding federal tax penalties. Written tax advice which meets the standards for "covered opinions," and which may be relied on to avoid federal tax penalties may be obtained by contacting the appropriate attorney at Miller Canfield.

For further information regarding the new Circular 230 regulations, please contact our Federal Tax and Employee Benefits Group; Michael A. Indenbaum at (313) 496-7979, email: indenbaum@millercanfield.com; or Carolee Kvorik Cameron at (313) 496-7627, email: cameronc@millercanfield.com. This message is for general information only and should not be used as a basis for specific action without obtaining further legal advice.