

The IRS Office of Professional Responsibility Weighs In on the Proper Use of Artificial Intelligence

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Background

The IRS Office of Professional Responsibility ("OPR") is responsible for interpreting and applying the Treasury Regulations governing practice before the Internal Revenue Service (commonly known as "Circular 230"). It has exclusive responsibility for overseeing practitioner conduct and implementing discipline. For this purpose, practitioners include attorneys, certified public accountants, enrolled agents, enrolled actuaries, appraisers, and all other persons representing taxpayers before the Internal Revenue Service.

In essence, Circular 230 sets forth the "rules of the road" for tax practice before the Service. Circular 230 cases generally revolve around a practitioner's fitness to practice. The OPR's mission is to "interpret and apply the standards of practice for tax professionals in a fair and equitable manner."

We have not seen many significant developments coming out of the OPR or arising from Circular 230 in the past few years. As a result, I have not written about either the [OPR or Circular 230](#) in some time.

Alert 2026-19

On June 24, 2026, the OPR issued Alert 2026-19, [Introductory Guidelines for Responsible AI Use in Federal Tax Practice](#). All tax practitioners and others governed by Circular 230 should take note of this alert. It provides basic guidelines that tax practitioners need to understand and follow when using artificial intelligence ("AI") in providing services to clients.

While many tax practitioners have been using AI (and perhaps without even realizing it) for some time in research products such as LexisNexis and Thomson Reuters' Westlaw Edge, the technology is rapidly developing in an application called Generative AI ("GAI"). GAI, combined with open-source programs, creates original content. The OPR acknowledges that the use of GAI in the tax profession is quickly evolving. It can provide rapid analysis of complex tax matters, resulting in significant time/cost savings. While GAI may have these advantages, the OPR warns practitioners of its limitations.

"Yet, it has limitations-such as fabricated outputs (or, as commonly termed, "Hallucinations"), bias, and lack of transparency, and these pose serious ethical and legal risks. As a result, the use of GAI presents concerns involving privacy, confidentiality, and data protection. For example, client privacy can be compromised when data generated for one client is repurposed by the program to respond to an inquiry concerning another client, or data compiled for a particular issue is spilled over into an algorithm and combined with a related tax issue involving a different client. As such, it is incumbent on any tax professional using GAI to carefully review all documents crafted by the technology."

The OPR warns of the dangers of improper use of GAI resulting in fake citations and other hallucinations appearing in tax practitioners' work product, including court filings. We have all read about attorneys being sanctioned by courts for improper use of GAI, as well as regulatory body disciplinary proceedings and malpractice lawsuits against these practitioners. The OPR alerts tax practitioners of the importance of "diligent human oversight" when using AI tools. Put differently, tax practitioners cannot blindly rely on AI. The OPR references a real-world example of the improper use of AI. The Australian government engaged Deloitte Australia to perform services. Deloitte Australia produced a 230-page report that the government published on its website in July 2025. The report contained quotes attributable to a judge that were invented, references to sources that do not exist and books ascribed to the wrong author. It turns out the report was produced (at least in part) by GAI.

Circular 230 and the Intersection of AI

Section 10.22

Section 10.22 of Circular 230 requires practitioners to exercise due diligence in the preparation of (or assistance in the preparation of), approving or filing tax returns and documents relating to matters with the IRS. This requirement extends to oral or written statements made to the Department of Treasury or clients with respect to any matter administered by the IRS.

With respect to the requirements of Section 10.22, the OPR advises practitioners to thoroughly review all AI-created material before incorporating it into any document or statement presented to the IRS or a client. All facts, citations, calculations and conclusions produced by AI must be verified.

"[H]uman scrutiny and editing are essential to ensure correctness and compliance with IRS expectations."

Section 10.27(a)

Section 10.27(a) of Circular 230 provides that a practitioner may not charge an unconscionable fee in connection with any matter before the IRS. The OPR acknowledges that AI can reduce the time it takes to

research tax matters and draft documents. However, it warns practitioners that not passing on these savings to clients may result in a violation of Section 10.27(a) of Circular 230.

Section 10.35

Section 10.35 of Circular 230 requires a practitioner to possess the necessary competence to practice before the IRS. In the context of AI, the OPR declares that tax practitioners must understand how AI develops content and recognize the vulnerability for bias and errors if they intend to use AI in their practices.

Section 10.36

Section 10.36 of Circular 230 requires that people overseeing a firm's tax practice are responsible for adequate procedures being in effect to ensure Circular 230 compliance by members and staff of the firm. The OPR warns that Section 10.36 extends to the use of AI. Accordingly, firms need to deploy written internal policies for compliance with Circular 230 in the AI space, including comprehensive training of all staff and members relative to using AI tools; establishing protocols for data handling, and accuracy monitoring; and the vetting of outside vendors of AI tools.

Section 10.37

Section 10.37 of Circular 230 sets forth the requirements under which a practitioner may give written advice concerning federal tax matters. The requirements include basing written advice on reasonable factual and legal assumptions, reasonably considering all of the facts and circumstances, using reasonable efforts to identify and ascertain applicable facts, and refraining from relying upon statements or documents unless reliance is reasonable. Based upon Section 10.37, the OPR concludes that practitioners should only use AI as a starting point, subject to thorough review before providing a written product to the IRS or a client. If a practitioner uses GAI to draft written advice, the practitioner needs to independently authenticate all factual and legal information.

"Blind reliance on what AI yields, especially when the underlying logic or sources are unclear, may constitute unreasonable reliance."

Section 10.51(a)(15)

Section 10.51(a)(15) of Circular 230 prohibits the willful disclosure or use of tax return information in an unauthorized manner. Further, Code Sections 6713 and 7216(a) provide that civil and criminal penalties may be imposed for unauthorized use or disclosure of tax return information. The OPR warns practitioners that GAI platforms may pose the risk of unauthorized disclosure of taxpayer information. Consequently,

practitioners should ensure they only use secure AI tools.

State Law

The OPR advises tax practitioners that many states, including California, Colorado, Illinois and Utah, have enacted legislation governing the use of AI. Additionally, state bar associations and boards of accountancy have or may adopt rules relating to the use of AI. Practitioners must be aware of these rules.

Best Practices

The OPR offers best practices that tax practitioners should follow to ensure responsible use of AI:

- Identify and remain current on relevant federal and state AI laws and regulations.
- Establishing secure data handling protocols and access controls.
- Document AI usage and verification processes.
- Foster transparency and accountability in all AI practices.
- Adopt clear procedures for handling breaches or errors.
- Provide training for anyone within the firm who may use AI.
- Vet third-party AI offerings before purchasing or using them.
- Never upload sensitive data to unsecured sites.
- Consider all AI-generated documents as a first draft that requires thorough human review for factual and legal accuracy (checking citations and for bias).

Conclusion While AI may improve efficiency for tax practitioners in the delivery of services, it is not a substitute for professional care and judgment. Practitioners must remain vigilant when working with AI. The risk of Circular 230 noncompliance, as well as ethical and professional standards, and applicable AI or privacy laws, is too great.

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