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STATE OF CALIFORNIA
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DEPARTMENT OF CONSUMER AFFAIRS

LICENSING AS A PROFESSIONAL FIDUCIARY IN CALIFORNIA Enrolled Agents

February 2, 2009

Attention Interested Parties of the Professional Fiduciaries Bureau:

This Advisory relates to the application of Section 6530(d) of the Business and Professions Code to a person enrolled as an agent to practice before the Internal Revenue Service.

Section 6530 of the Business and Professions Code provides:

6530. (a) On and after January 1, 2009, no person shall act or hold himself or herself out to the public as a professional fiduciary unless that person is licensed as a professional fiduciary in accordance with the provisions of this chapter.

(d) This section does not apply to a person enrolled as an agent to practice before the Internal Revenue Service who is acting within the scope of practice pursuant to Part 10 of Title 31 of the Code of Federal Regulations.

Enrolled agents are certified to represent taxpayers before the Internal Revenue Service. Under Section 10.2 of Subpart A, Rules Governing Authority to Practice, of Part 10 of Title 31 of the Code of Federal Regulations, the following defines the scope of practice for an enrolled agent:

"Practice before the Internal Revenue Service comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion, and representing a client at conferences, hearings and meetings."

As applied to licensing as a professional fiduciary in California, the exemption applies to an enrolled agent acting within the scope of practice of an enrolled agent pursuant to Part 10 of Title 31 of the Code of Federal Regulations. However, any activities of an enrolled agent that are not within the scope of practice pursuant to the federal regulations would fall outside the exemption. For example, if an enrolled agent is performing activities as a conservator, guardian, trustee, or agent under durable power of attorney for health care or finances within the definition of a professional fiduciary pursuant to the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code) that are not within the scope of practice described in Part 10 of Title 31 of the Code of Federal Regulations, they must obtain a license from the Professional Fiduciaries Bureau to comply with the law.

Thanks,

Mellonie Yang, Chief
Professional Fiduciaries Bureau