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Hawkins Clarifies Power of Attorney Directive


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Summary by **taxanalysts**


A September 2014 directive from the IRS Office of Professional Responsibility calling on IRS Large Business and International Division examiners to require a power of attorney form for all persons practicing before the IRS was supposed to be helpful for practitioners rather than raise questions, OPR Director Karen Hawkins said June 25.

Full Text Published by **taxanalysts**

A September 2014 directive  from the IRS Office of Professional Responsibility calling on IRS Large Business and International Division examiners to require a power of attorney form for all persons practicing before the IRS was supposed to be helpful for practitioners rather than raise questions, OPR Director Karen Hawkins said June 25.

"I didn't realize I would get everyone so excited when I put that out; I was trying to be helpful," Hawkins said in Washington at an ethics luncheon sponsored by the Federal Bar Association -- her final public speaking engagement before her retirement. (Prior coverage )

The directive requires those practicing before the IRS to file a Form 2848, "Power of Attorney and Declaration of Representative," even if they are already identified on the communication agreement on an LB&I examination plan.


OPR first released the directive internally because LB&I examiners didn't grasp the difference between the power of attorney and Form 8821, "Tax Information Authorization," Hawkins explained. The concept that a representative arguing in front of the IRS on behalf of somebody else needs a signed Form 2848 had been lost "not just externally but internally," she said. (Prior coverage )

OPR "owns Form 2848 and the instructions," Hawkins added, referring to her office being in charge of the form. She also said the Service is looking to make the form electronic.

Fred Murray of Grant Thornton LLP said that although many corporate tax departments have been arguing for years about whether they are subject to Circular 230 when making representations to the IRS, the directive and Form 2848 make it clear that they will be subject to the regulations.

Hawkins said the inclusion of "vanity-titled" officers in the directive was meant to address companies that give the title of vice president to lots of employees, beyond those named in the articles of incorporation or bylaws.

Although Murray said the guidance provided some clarity, he said he has the most questions when trying to determine who is authorized to sign the Form 2848 for partnerships.


In February the IRS released chief counsel advice (ILM 201522005 ) saying that if there is a limited liability company and its member-manager is a subsidiary of a consolidated group, the officer of the common parent is authorized to sign the power of attorney.

Shamik Trivedi of Grant Thornton said that LLCs will now need to go up their ownership chains to find an officer of the common parent to execute the power of attorney, even though the partnership may be several tiers below the parent.

The ultimate goal of the memorandum is to ensure that the correct person authorizes the Form 2848, Murray said. "If the wrong person signs the [Form] 2848, everything that person does with the 2848 may not have been validly done and may raise a set of questions you don't want to deal with," he said.

"This particular release came from some place besides OPR," Hawkins said of the memo. "I'm not saying this to offer an opinion one way or another." She added that she did not know the guidance existed until it came up in preparation for the panel.

Appraiser Discipline Under Circular 230

In March 2014 OPR made its first public pronouncement (IR-2014-31 ) of discipline against a group of appraisers that were doing flat percentage reductions on historical facade easements in a major U.S. city. As part of the settlement, OPR agreed not to disclose the identities of the appraisers.

Hawkins said that the settlement piqued the interest of the IRS because the agency didn't realize OPR could be effective in disciplining appraisers. She added that she has done presentations for the IRS Art Advisory Panel since the settlement and that there are several pending cases in OPR involving appraisal activity.

"I am not going to see any of those come to fruition while I'm in the office, but I certainly hope, knowing the facts, that we will get some results from these," Hawkins said.

Murray asked Hawkins if OPR can apply Circular 230 to economists conducting business valuations, and she directed his attention to the statute, which says "any appraiser." She added, "It doesn't say someone who is licensed or a member of a national organization as an appraiser."

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