

Hawkins Clarifies That OPR Won't Second-Guess Preparers' Advice by Jeremiah Coder

The IRS Office of Professional Responsibility does not intend to second-guess the substantive tax advice practitioners give to taxpayers, OPR Director Karen Hawkins said November 5, clarifying remarks made October 21 at the American Bar Association Section of Taxation meeting in Denver.

OPR is focused on determining fitness to practice before the IRS rather than the substance of tax advice, but when assessed preparer penalties are involved with conduct referrals it will engage in a serious, independent review of the procedures behind the particular advice given, Hawkins said at the annual meeting of the California Tax Bar and California Tax Policy Conference in San José. (For prior coverage, see *Doc 2011-22261* or *2011 TNT 205-7*.)

But OPR has suggested to IRS Appeals that its officers consider making referrals when it sustains an underlying tax adjustment but abates an accuracy-related penalty based on the taxpayer's reasonable reliance on a professional adviser, she said. Appeals should "think about whether that person should be referred over to OPR for us to look at their competence," she said. "We're not about making our own judgments and replacing yours about whether it was good advice or bad advice. We're about looking for due diligence, we're looking for conflicts of interests," Hawkins said. With an ultimate focus on the ethical issues contained in Circular 230, she said, "I'm not going to try to second-guess someone even on a tax shelter." When a referral is made from the field, OPR intends to look at the due diligence efforts made in coming up with an answer, rather than the underlying decision itself, she said. "OPR does its own independent decision-making about whether the section 6694(b) penalty also reflects significantly enough on the practitioner's conduct for us to conclude that that practitioner is not fit to practice anymore," Hawkins said.

OPR's goal is not punishment, which is the realm of Title 26, she explained, but rather to ensure that practitioners do not endanger taxpayers or the tax system through disregard for ethical rules or through deliberate misconduct.

Hawkins said she ultimately wants to see OPR engaged in pursuing practitioners who have displayed bad conduct. "I want to see people who are doing more than just being creative about finding the gray areas and arguing those," she said. "I am looking for people who are stepping over the bounds. I am looking for people who are taking advantage of taxpayers, or who are showing such a disrespect for the system that they have no business in practicing. That is where I want to go."

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