

Tax Notes Today

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Hawkins Explains Expanded Due Diligence Concepts

By Jeremiah Coder

Assisting with a collection due process claim involving alternative collection methods could lead to practitioner discipline if the taxpayer hasn't complied with payment and filing obligations, IRS Office of Professional Responsibility Director Karen Hawkins said November 2.

Circular 230 section 10.34(b) establishes the standards for taking non-frivolous positions on returns and for attempting to delay tax administration proceedings, Hawkins said at the annual meeting of the California Tax Bar and California Tax Policy Conference in Coronado, Calif. Because it is common knowledge that the IRS will reject a CDP request because of taxpayer noncompliance, both the field and OPR are scrutinizing those types of submissions, she said. Of particular concern are practitioners who assist a taxpayer in submitting a claim that the practitioner knows will be rejected out of hand, she said.

The broad theme of due diligence in Circular 230 guides OPR in evaluating cases for possible discipline, Hawkins said, adding that OPR's primary criteria in overseeing fitness to practice under Circular 230 are the practitioner's good reputation, good character, qualifications to provide valuable representation to clients, and competency to advise taxpayers. Section 10.22 of Circular 230 requires practitioners to exercise due diligence in preparing tax returns and other documents making representations to the IRS, and to determine the accuracy of oral and written representations made to Treasury, she said.

"If I only had section 10.22, I think I could do 90 percent of the work that needs to be done in OPR," Hawkins said. A safe harbor in section 10.22 allows practitioners to rely on another individual's work product to satisfy due diligence requirements, but many tax professionals overlook the condition that reliance requires reasonable care, she said. Practitioners are responsible for how they hire, supervise, train, and engage another professional, she said, adding that "it's governed by the facts and circumstances of the relationship."

Hawkins said the provisions of newly proposed section 10.37 apply a principles-based concept of due diligence for written advice. She received applause after discussing proposed changes to Circular 230 that would revoke section 10.35 for covered opinions and eliminate the need for disclaimers in e-mails.