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CPA Disbarred for Failure to Exercise Due Diligence and Compliance Problems

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WASHINGTON — The Office of Professional Responsibility (OPR) has prevailed in an agency appeal involving issues which include the due diligence responsibilities of a CPA under the Rules of Practice before the IRS (Circular 230). The May 28th decision of the Appellate Authority has upheld the Administrative Law Judge's ("ALJ") disbarment of CPA Tim W. Kaskey finding, among other things, that Kaskey failed to exercise due diligence in preparing tax returns for a corporation and its husband and wife shareholders.

"This is yet another decision highlighting that practitioners have a duty to the system as well as to their clients. Practitioners who do not take this duty seriously can expect to be held accountable," said Office of Professional Responsibility (OPR) Director Karen L. Hawkins said.

Kaskey is a CPA and tax advisor who also prepared individual and corporate tax returns.

OPR alleged that Kaskey failed to exercise due diligence under Circular 230, section 10.22 when he failed to determine the correctness of the representations he made to the IRS on the tax returns of a corporation and its married shareholders. OPR also alleged that Kaskey's misconduct included a failure to comply with the requirement to advise clients of potential penalties and any opportunities to avoid such penalties by disclosure contained in Circular 230, former section 10.34(b) (now section 10.34(c))

When Kaskey failed to respond, or appear, at the administrative proceeding, the ALJ deemed the allegations against Kaskey admitted and entered a default judgment for disbarment. Kaskey appealed. On review, the Treasury Appellate Authority agreed that disbarment was proper. Kaskey defended against the due diligence allegations by arguing that his clients had misrepresented their income to him. The Appellate Authority observed that there was "a great deal of evidence reflecting the lack of due diligence by [Kaskey] in the preparation of these returns…[and that] "it was inconceivable that [the individual taxpayers] could pay their living expenses based on the income reported on their returns."

"Practitioners who think OPR isn't serious about due diligence should take heed," added OPR Director Hawkins. "Practitioners may not ignore the implications of information already known, and must make reasonable inquiries if the information furnished by a client appears to be incorrect, inconsistent, or incomplete."

The Appellate Authority's and ALJ's opinions are available on the IRS Website; search "OPR".