

## Tax Notes Today

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### **OPR CAREFUL ABOUT CHARGING PRACTITIONER MISCONDUCT, HAWKINS SAYS**

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IRS Office of Professional Responsibility Director Karen Hawkins said May 8 that her office is "protective of initiating complaints" against alleged practitioner misconduct under Circular 230.

Speaking on a *Tax Talk Today* webcast sponsored by Tax Analysts and the National Association of Enrolled Agents, Hawkins said that because OPR must eventually defend a complaint before an administrative law judge, its attorneys are careful to make sure that alleged misconduct referred by IRS field agents can be proven by clear and convincing evidence as a willful violation. When the field complains to OPR of some practitioner conduct, the office often sends out a pre-allegation letter to the practitioner to "get both sides of the story" before using significant resources building a misconduct case, she said.

Personal noncompliance is easy for a practitioner to correct, while behavior issues are harder to police, Hawkins said. OPR ultimately is focused on ensuring that a practitioner exhibits fitness to practice before the IRS, and that focus plays a part in how it looks at whether to proceed with a complaint, she said.

Hawkins said it is important to note that OPR cannot impose sanctions on its own but must first initiate a charge that is then taken to an ALJ. The success that OPR has had in ALJ hearings and before the appellate authority in enforcing Circular 230 shows that "there is a consistency in OPR's thinking about what sanctions are appropriate," she said. The ALJ and appellate authority decisions generally view the sanctions sought by OPR as reasonable, she said, noting that when there has been a divergence, the final sanction has usually been stronger than what OPR asked for. (For prior analysis, see *Doc 2012-4798* or [2012 TNT 48-2](#).)

There are two ways the holder of a preparer tax identification number can be disciplined without OPR initiating action, Hawkins said. The IRS Return Preparer Office can revoke the PTIN of an applicant who lied on his application or of a PTIN holder who becomes incarcerated, she said. In both circumstances, the individual can appeal the action to OPR, she said.

Hawkins said that the IRS is still working on incorporating formalized due process elements for electronic filing requirements. However, the IRS "is more toward the end of that process" in making e-file guidelines governing electronic return

originators and electronic filing identification numbers "look more like Circular 230 provisions," she said. OPR is close to being able to coordinate with the Return Preparer Office in a way that "will make practitioners comfortable," she said.

Hawkins said that under Circular 230, contingency fee agreements for tax return preparation services are generally not allowed. But OPR is aware of a "large unauthorized practice" using contingent fees, especially involving the research credit and other refundable credits, she said. "All are forbidden under current rules," she said, adding that OPR is preparing to take on practitioners and firms offering contingent fee agreements.

The IRS is also working on another set of proposed rules for Circular 230 that will incorporate provisions from various notices clarifying the new preparer oversight regime, Hawkins said. "There will be some surprises" that can't yet be made public, she said.

Asked about the scope of OPR oversight, Hawkins said that preparation of foreign bank account reports is subject to the rules of Circular 230, because even though it is a Title 31 requirement, it is overseen by the IRS.