

OPR Cautions Disciplined Practitioners
September 30, 2010

With new clarification from the IRS that return preparation by anyone constitutes practice before the agency, Karen Hawkins, director of the IRS Office of Professional Responsibility, said September 29 that tax professionals have to be aware of their responsibility to not utilize assistance from practitioners disciplined under Circular 230.

Hawkins said that recently proposed amendments to Circular 230 make clear that "return preparation is practice for everyone." Previously, there had been some disagreement about that interpretation, but the new rules, if adopted, put everyone on the same playing field.

Under section 10.24, practitioners may not knowingly accept assistance from individuals who are disbarred or suspended by OPR, she said at the Southern Federal Tax Institute conference in Atlanta. It used to be that suspended practitioners would often resort to preparing tax returns during the term of their discipline, she said. But "going forward, OPR won't allow that as a fall back career," she said.

Proposed section 10.34 changes the ethical standards for practitioners respecting tax return preparation to reasonable basis, Hawkins said. "We got it right this time," she said, noting the previous disconnect between Circular 230 rules for practitioners versus taxpayer standards. The IRS used to try to make the standards in section 10.34 equivalent to those imposed under section 6694, she said. But the new position "breaks the chain of IRS matching" the two up, she said, so if Congress makes future changes to section 6694, section 10.34 won't necessarily have to be altered. It means "we can stick with reasonable basis," she said. (For prior coverage, see Doc 2010-18508 or 2010 TNT 161-1.)

Robert Fink of Kostelanetz & Fink LLP said it is "dangerous" for Circular 230 to be applied in a technical manner divorced from the reality of tax practice. The many rules are often loosely worded and can be "pernicious" to unsuspecting but well-meaning practitioners, he said.

Hawkins said OPR is stressing to its sources of case referrals that the burden of proof is willfulness. Allegations of unreasonable delay, which represented a significant percentage of the caseload last year, have "dropped to a trickle," she said.

ABA Remarks

In prior remarks at the September 25 fall meeting of the American Bar Association Section of Taxation in Toronto, Hawkins said there are six cases currently before the appellate authority that OPR has appealed regarding the appropriate statute of limitations governing OPR actions.

Also at the ABA meeting, Richard Goldstein, IRS special counsel to the associate chief counsel (procedure and administration), said recently proposed amendments to Circular 230 clarify the definition of practice to make clear that return preparation is always practice before the IRS.

Hawkins said that frequently-asked questions, or guidance in a similar format, is likely to be forthcoming to help practitioners understand the contours of the definition.

With regard to the preparer registration proposal, ongoing decisions are being made for the testing and continuing education components, Hawkins said. It is likely that testing for non-exempt preparers will become available in the middle of next year, she said, while the education requirements are still being sorted out.

Hawkins noted that OPR continues to use soft notices and reprimands as a wake up call to practitioners engaged in conduct that does not comport with the ethical standards of Circular 230. She also mentioned that her office will begin notifying the employers of disbarred or suspended practitioners so that firms understand their obligation to not employ such individuals in roles inconsistent with their punishment.