

Tax Notes Today
OPR Closer to Announcing Monetary Sanctions
By Jeremiah Coder

The IRS Office of Professional Responsibility is close to announcing the imposition of monetary sanctions under Circular 230, its director, Karen Hawkins, said January 25.

OPR is examining firm culture because it has seen several examples in which there is a "lackadaisical attitude" about following rules, Hawkins said. She added that the monetary sanction is a viable penalty to use against individuals who are not subject to Circular 230, for example at firms that have non-practitioners either owning the business or supervising Circular 230 practitioners. "We are anticipating, at least in 2013 sometime, being in the position to announce that we have imposed monetary sanctions on more than one occasion," Hawkins said at the Standards of Tax Practice session of the American Bar Association Section of Taxation meeting in Orlando, Fla.

Hawkins also announced that she will remain at OPR beyond her original four-year term and "for the foreseeable future."

One recent OPR sanction broke new ground in that it disbarred an unenrolled return preparer, Hawkins said. Circular 230 section 10.8(c) covers preparers who prepare documents related to a taxpayer's liability. "We are using [that section] to pursue discipline against unenrolled, unlicensed return preparers irrespective of their [preparer tax identification number] status, irrespective of whether they have taken and passed the registered return preparer exam," she said.

OPR has been working more closely with the Justice Department in the latter's efforts to get injunctions in preparer penalty cases, Hawkins said. "I welcome those opportunities; I think that they are very efficient and a good use of resources," she said, adding that they help the practitioner get closure concurrently for all issues the government might pursue. "I think you will be seeing more and more of these."

OPR investigations into practitioners' nonpayment of personal taxes now routinely look for patterns of willful conduct, Hawkins said. "We are looking more carefully now at what that nonpayment might suggest," she said, adding that multiple years of large nonpayments or failure to file quarterly estimates for self-employed individuals might indicate a pattern "that constitutes willful evasion of assessment or willful evasion of payment."

In several cases in the pipeline, OPR is pleading those charges based on the underlying conduct and behavior of the practitioner over a period of time, Hawkins said. Patterns in those cases show that "the failure to file is a deliberate attempt to obfuscate the amounts of income that the practitioner is earning," Hawkins said.

The tax bar has praised the proposed removal of Circular section 10.35 covered opinion standards. Many practitioners, as well as the government, are frustrated that firms have adopted blanket disclaimers regarding taxpayers' ability to rely on some communications -- particularly general e-mails -- despite the requirements of the rules. The continued use of repudiatory jurats following the adoption of the proposed rules will mean that practitioners who continue to use them are "clearly misstating the rules," Hawkins said. Those practitioners may be violating due diligence requirements to correctly offer advice,

she said, adding, "I get a little frustrated at people focusing on the head of the pin without remembering that there is a whole piece of cloth behind it."

In its investigations, OPR proceeds based on the facts involved, Hawkins said. "Where we get [a referral] with some complicated behavior, we're going to spend some time with it, particularly where there are allegations of taxpayer harm or harm to the system," she said. OPR takes a careful look in those situations because it doesn't want to leap to conclusions about the level of misconduct, and it wants to give practitioners a chance to explain themselves, she said.