

## **Federal Tax Day - Current, I.2, OPR Focuses on Patterns of Willful Behavior, Hawkins Says, (Jun. 26, 2015)**

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The IRS Office of Professional Responsibility (OPR) addresses behavior that is willful, reckless or incompetent, OPR Director Karen Hawkins said June 25 in Washington, D.C. Several occurrences of improper actions may give rise to a pattern of bad behavior that triggers review and possible disciplinary action by OPR, Hawkins explained, adding that a single occurrence of behavior that is merely negligent is generally not enough to trigger OPR action. Hawkins has announced that she will retire from the IRS in two weeks, after a six-year term as director of OPR.

Hawkins spoke at a program of the Federal Bar Association on Ethical Considerations in Tax Controversy. The program was held at the law offices of Pepper Hamilton LLP, and was moderated by Todd Reinstein, a partner with the firm. Fred Murray and Shamik Trivedi of Grant Thornton, LLP, and Theresa Dandruff of Miller & Chevalier Chartered, also participated.

### **OPR**

OPR is governed by Title 31 of the U.S. Code and regulations issued by the Treasury, Hawkins said, not by Title 26, the Internal Revenue Code. Thus, OPR is very independent. Its mission is to educate and reach out to people who practice before the IRS and who are, therefore, subject to Circular 230, the Regulations Governing Practice before the IRS, according to Hawkins. OPR's other responsibility is to discipline taxpayer representatives for improper conduct, she added.

Hawkins noted that the IRS is responsible for some laws that may involve the Treasury Department as well as other agencies. These are not only tax laws; they include the reporting of foreign accounts and the administration of the health care laws. Despite its criticism of the IRS, Hawkins said Congress recognizes that the efficiency of the IRS and continues to give it more responsibility regarding practice before the agency.

### **Practice**

Hawkins stated that OPR defines practice before the IRS broadly as "all matters connected with a presentation to the IRS, or any of its officers or employees, relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the IRS." The mere preparation of a tax return or of an ordinary refund claim is not practice before the IRS, she stated quite clearly.

Some people believe that OPR can only look at behavior after the representative submits a power of attorney, Form 2848. However, once a tax preparer comes in to the IRS to represent a taxpayer, the preparer is "fair game," Hawkins said. OPR can determine competence, qualifications and integrity—fitness to practice—based on all actions of the individual, past and present. "There is no other logical way to approach it," she noted.

OPR has jurisdiction over practice by attorneys, CPAs, enrolled agents and actuaries and appraisers, Hawkins said. The term "appraiser" includes anyone who does appraisal work, such as an accountant. The office got some attention when it disciplined a group of appraisers. Although she cannot disclose any names, Hawkins explained that was the office's first public action regarding appraisers. Her office can disqualify appraisals from being used; once OPR does this, the Tax Court "piggybacks" on its actions and will also disregard the appraisal.

Hawkins noted that, as a tax attorney in private practice, her focus was on the ethics rules in the state where she was licensed and conducted her practice, not on Circular 230. If she observed the state requirements, she believed she would be in compliance with IRS's ethical rules. State rules for CPAs may not cover the same areas, so it is important for CPAs to be familiar with Circular 230, she said.

### **Referrals**

The office only has eight attorneys, so it is very dependent on IRS field agents to make referrals for disciplinary action, Hawkins said. She was very proud that the office moved 800-to-900 cases in the past year.

At the same time, Hawkins has talked to IRS examiners and instructed them not to threaten taxpayers or their representatives with a referral to OPR. "These threats are absolutely unacceptable," she said.

## **Disclosures**

Hawkins also stressed that OPR will not disclose information about disciplinary actions unless it is permitted by [Code Sec. 6103](#). The office publishes names in the Internal Revenue Bulletin but will not provide files to anyone (such as a plaintiff in a civil malpractice suit) unless it is served with a court order. She noted that, although the state of New York has its own tax practice office that shares information with the IRS, the Service does not have the authority to share information with the state.

By Brant Goldwyn, Wolters Kluwer News Staff