

Tax Notes Today

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ABA MEETING: FIELD AGENTS SHOULD LEAVE OPR OUT OF OPEN EXAMINATIONS, HAWKINS SAYS

By Stokeld, Fred

An **IRS** field agent conducting an examination of a taxpayer should not threaten to refer the taxpayer's practitioner to the agency's Office of Professional Responsibility while the examination is still open, OPR Director Karen Hawkins said May 11.

Speaking at a Tax-Exempt Financing session of the American Bar Association Section of Taxation meeting in Washington, Hawkins said OPR is constantly admonishing field agents not to threaten anything related to her office during the course of an examination of a practitioner's client (although it would be different if the practitioner were the subject of the examination). To do so "means the agency has triggered the conflict of interest and has essentially pulled that practitioner out of the mix inappropriately," she said. "We should not be that much of a player in the relationship between the client and their representative."

If a field agent contacts OPR during an examination and the complaint is about obnoxious behavior by the practitioner rather than actions that are contemptuous or threatening, OPR will reject the referral as premature, Hawkins explained. If the field agent still feels the same way after the examination has ended, OPR may be willing to listen to the agent's concerns.

"But we're not going to take it [during an examination]," Hawkins said. "It's inappropriate. And we remind them about triggering conflicts on their own, and we'll send it right out of the office."

Hawkins said OPR has produced an internal webinar on Circular 230 for **IRS** field personnel that will air in June. The webinar will discuss what OPR considers to be characteristics of good referrals as well as inappropriate referrals, she said.

No Secret Files

At a Standards of Tax Practice panel, Hawkins responded to practitioners who may have misconstrued remarks she made May 3 and adamantly stated that OPR does not keep secret files on practitioners. (For prior coverage, see Doc 2012-9615 or 2012 TNT 88-4. For a related letter to the editor, see Doc 2012-9952.)

"I think that the transparency of OPR has increased exponentially over the past three years," Hawkins said, noting that OPR now publishes final disciplinary

decisions and has instituted pre-allegation letters to inform practitioners of complaints. In fact, of the 744 cases disposed of last year by OPR, three-quarters of them were resolved by either soft letters or discipline without sanction, she said.

Hawkins said there is no correlation between field referrals to OPR and compliance visits to preparer offices made by the **IRS**. "That is a separate initiative by the **IRS**" to ensure preparer compliance, she said.

Now that electronic filing is mandatory for most preparers, the **IRS** recognizes the need to ensure some measure of due process rights for individuals who must follow the rules governing e-filing, Hawkins said, adding that the suitability checks for e-filing preparers will be coordinated with preparer tax identification number requirements in the coming months.