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Tax Practice: IRS Goes After Contingent Fee Scofflaws; Creates Inventory of Circular 230 Violators

By Diane Freda

The Internal Revenue Service's Office of Professional Responsibility is gearing up to sanction tax preparers who are collecting unauthorized contingent fees, particularly in the area of refundable tax credits, OPR Director Karen Hawkins said May 8.

Hawkins told a TaxTalk Today audience that, particularly in the research and development credit area, people are offering contingent fee activity to amend tax returns, which is forbidden under Circular 230.

A new provision in Treasury Department Circular 230 regulations under Section 10.8(c) expands OPR's authority, and gives it jurisdiction over any individual who prepares for compensation all or a substantial portion of a document for submission to IRS with respect to a taxpayer's liability.

And it is not just the people at the top of the tax preparation firms that will be pursued, Hawkins made clear.

Scope of Provision.

"I view the people who are behind the scenes running the spreadsheets on refundable credits as essentially being subject to that provision," she said, indicating that IRS would not wait for referrals from other areas of IRS or outside sources to pursue possible violators, but would generate its own inventory of cases.

Contingent fees are currently allowed under Circular 230 in very limited circumstances.

Contingent fees are allowed when a tax preparer is representing a client during an examination of an original return, and for work on amended returns if the amendment is done within 120 days of when the service began an examination. They are also allowed if a claim for refund has been filed in conjunction with a penalty or interest charge, and always in litigation.

"Other than that, I would say contingent fees are off limits," Hawkins said. Surprise Changes to Circular 230 Coming.

Hawkins also said she has several “surprises” in store for practitioners in terms of changes to Circular 230.

She did not disclose what they were, but said: “Watch this space.”

Some existing guidance from the last two years will also be incorporated into the pamphlet through a notice of proposed rulemaking, as well as a cleanup of Subpart D of Circular 230, which deals with conduct of disciplinary actions and proceedings in connection with circular violations.