

## Tax Notes Today

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### **ABA MEETING: OPR AND DOJ COORDINATING ENFORCEMENT AGAINST RETURN PREPARERS**

By Kristen Parillo

The IRS Office of Professional Responsibility and the Justice Department Tax Division are working to better coordinate injunctive action against return preparers and promoters now that it's been acknowledged that OPR has jurisdiction over unlicensed return preparers.

Speaking at a September 20 Standards of Tax Practice session of the American Bar Association Section of Taxation meeting in San Francisco, OPR Director Karen Hawkins said she and other IRS officials recently met with Kathryn Keneally, assistant attorney general for the DOJ Tax Division, and others from the Justice Department.

"The conversation was enormously productive," Hawkins said. "There's a lot of stuff that's already working well, but we talked about other kinds of things we will be doing to coordinate even better."

In the area of return preparer injunctions, DOJ lawyers both in and out of the Tax Division will be encouraged to use language that OPR has crafted for them when dealing with the voluntary relinquishments of preparer tax identification numbers and electronic transmitter identification numbers. This will help prevent OPR from wasting resources if they have to go after unlicensed preparers a second time after the injunction has been imposed.

Keneally is dedicated to using government resources effectively and efficiently, Hawkins said. "So this was another step, and I'm delighted to have a friend in the [assistant attorney general's] position where we can put this stuff together and see relevant government agencies coordinating, cooperating, and communicating much more efficiently and effectively with one another," she said.

Hawkins said the recent meeting is part of what she and Russell Clarke, DOJ Tax Division attorney (civil trial section, central region), alluded to during a panel discussion at the May ABA Tax Section meeting, when they spoke about the DOJ and OPR joining forces to make return preparer injunction actions a priority. (Prior coverage (Doc 2013-11538).)

#### **Section 10.31 Initiative**

Hawkins discussed an OPR initiative to crack down on return preparers who take their fee out of a portion of their clients' tax refunds. Taking a preparer fee out of a refund violates Circular 230 section 10.31, which states that "a practitioner who prepares tax returns may not endorse or otherwise negotiate any check issued to a client by the government in respect of a Federal tax liability."

The proposed Circular 230 regulations (REG-138367-06 (Doc 2012-19202)) would expand the scope of section 10.31 to cover a "payment made by any means, electronic or otherwise." Preparers who are improperly taking their fee out of a client's tax refund do so by setting up a split direct deposit using Form 8888, "Allocation of Refund (Including Savings Bond Purchases)," or by using a bank product

through which the refund is deposited into a joint account in the name of both the preparer and the client.

Hawkins said that OPR has "fortuitously" discovered a database it can now access that shows which preparers are using Form 8888 to get themselves paid through the refund process. "We've got thousands of preparers out there who are taking pieces of their clients' refund using this Form 8888," she said. "So we've concluded that we [at OPR] are probably the most effective group to come in and start looking at this."

Hawkins said she has been getting the word out at tax forums attended by return preparers to let them know that by the next tax season OPR will be watching who's doing the split refunds using Form 8888. OPR hasn't decided at this point what type of disciplinary approach it will take, Hawkins said. "I run across a lot of folks who don't realize they shouldn't be doing that," she said. "So I don't think we're going to completely sever their arms at the front end of this, but we are going to start looking at it because it's a real abuse and a real problem in terms of where taxpayers' refund money is going."

### **Section 6694 Preparer Penalty Initiative**

Another initiative focuses on return preparer penalties imposed under section 6694. Under a section 6694(a) penalty, a referral to OPR is discretionary and generally has to involve multiple years and multiple taxpayers to establish a pattern of recklessness and incompetence. By contrast, section 6694(b) penalty assertions result in a mandatory referral to OPR.

Hawkins said OPR has discovered another database that identifies the number of times the field is imposing a section 6694(b) penalty but fails to refer the case to OPR, and also identifies when the field is imposing multiple section 6694(a) penalties that might show a pattern of conduct that the OPR should be aware of but the field is not referring the case.

"To the extent that it means we end up educating the field a little bit more about what their obligations are for referring those penalty cases over to us, then we'll do that," Hawkins said. "Otherwise, we just want to make sure across the board, between the two sides of the agency, that those penalties are being addressed appropriately."

### **Tax Debt Resolution Companies**

OPR continues to investigate tax debt resolution companies that may be using misleading advertising, making promises they can't keep, and making false representations about who's on their staff, Hawkins said. Several of the companies use mailers that look like IRS lien or levy notices. (Prior coverage (Doc 2011-19653).)

The companies are hard to pin down because they don't have an actual business address (just a mailing house) and only have 800 numbers, Hawkins said. However, OPR has identified several companies and has sent them a section 10.20 letter, which requires a practitioner or company to respond to any reasonable inquiries or requests from OPR for non-privileged information and documents. The letter asks about the company's advertising, how it's paying employees, whether it's charging contingency fees, and whether it's paying commission to others.

OPR recently sent out its first allegation letter to a debt resolution company specifying suspected violations of Circular 230 and letting the company know that OPR would like to discuss the matter with the company. "We'll keep heading in that direction, doing it in chunks," Hawkins said. "We're trying to be very cautious about doing it through public information. We have about half a dozen of them now going at various stages, and I think you'll see those as they come down the road."

### **Circular 230 Final Regs**

Matthew Cooper, Special Counsel, IRS Office of Chief Counsel, said the government is still working on finalizing the proposed Circular 230 regulations that were released in September 2012. He could not say when the final regs might be out.

Hawkins said the proposed regs were "the best received" set of proposed regulations she has ever seen under Circular 230. "There were almost no, what I would consider to be, negative comments," she said. "There were some constructive suggestions about little tweaks here and there, but there was no real agitation about anything that was being proposed."