

Tax Practice: OPR Targets Tax Debt Resolution Industry In Campaign Against Sanctionable Practices

By Diane Freda

The Office of Professional Responsibility has launched a campaign to educate the tax debt resolution industry about their duties under Circular 230, in an effort that could also lead to contact by the Internal Revenue Service when deceptive or misleading practices are suspected, Karen Hawkins, OPR director, said May 24.

Industry officials “can also expect to be hearing from my office when we see things called to our attention because they are sent to us by a taxpayer who is unhappy, or we see something on a website that looks like they are misleading the taxpaying public about what they can do for them, or we see something on T.V. that suggests that,” she told BNA.

Hawkins told BNA she said she has no doubt that OPR has jurisdiction over the tax debt resolution industry and those working in it.

“There is nothing in the definition of practice before the IRS that would suggest to me that their industry was intended not to be covered,” she said, reiterating comments she made to the National Association of Tax Resolution Companies earlier in the week.

“Practice” before the IRS includes preparing or filing documents, corresponding or communicating with the IRS, rendering written or oral advice, or representing clients at conferences, hearings or meetings.

Who is considered to be practicing before the IRS has been broadened so that all of those activities pertains to the tax resolution companies, which have come under fire from state attorneys general over the last year for offering to help taxpayers with their debts, and then doing little or nothing of assistance.

In August 2010, the state of California entered a \$34 million lawsuit against Roni Deutch, television's “Tax Lady,” for orchestrating a “heartless scheme” that swindled thousands of people facing serious and expensive tax collection problems with IRS ([162 DTR K-2, 8/24/10](#)).

J.K. Harris & Co. and Tax Masters have been forced into bankruptcy for practices such as offering to taxpayers installment plans with IRS, without telling them work would not be started on their case until the debt resolution companies were paid in full.

PTINs Required.

Hawkins said some owners or employees of such firms may be surprised to discover that two of the main forms they use in resolving tax debts, the Form 656 Series and the Form 433 Series, require that the preparer have a preparer tax identification number to compile them.

Since January 2011, anyone accepting compensation for preparing all or substantially all of these forms was required to have a PTIN, she said.

If multiple people work on the form so that it is impossible to tell who prepared all or substantially all of it, at least one of them must have a PTIN, Hawkins said.

In addition, she said one of two examples in Notice 2007-39 on OPR monetary penalties on practitioners or firms specifically contemplates a firm with a business model “that looks very much like what tax debt resolution firms do,” Hawkins said.

OPR Sections Apply.

A number of OPR sections apply to the resolution companies, but a primary section appears to be Section 10.22, the provision dealing with general due diligence of forms on accuracy provisions.

It requires those governed by Circular 230 to exercise due diligence when preparing—or assisting in preparing—approving, or filing tax returns or other documents or papers with the IRS.

Those governed must exercise due diligence when they are determining the correctness of any oral or written representation they are making to the Treasury Department, and must determine the correctness of any representation to clients with respect to matters administered by the IRS.

“This provision for me could not be overemphasized enough for this group,” Hawkins said.

This kind of expectation about due diligence essentially speaks to giving premature assurances that a taxpayer will get relief from tax liability, making misstatements about the length of time needed to process a debt relief request application, or knowingly omitting or allowing a client to omit relevant asset information when submitting financial statements to the IRS to get tax relief, Hawkins said.

Other Circular 230 provisions that will affect them are 10.20, 10.21, 10.34 (b and d), 10.27, and 10.30. The 10.30 solicitation provision says a practitioner can't use or participate in any form of public communication or private solicitation that contains a false, fraudulent, or coercive statement or claim. “Providing false hope in order to extract money from a desperate tax debtor is a violation of Section 10.30,” Hawkins said.