

Tax Notes Today

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OPR WILL TELL PRACTITIONERS TO REMOVE CIRCULAR 230 DISCLAIMERS

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The IRS Office of Professional Responsibility will send letters asking practitioners to stop using Circular 230 disclaimers saying the disclaimer is required, OPR Director Karen Hawkins said June 17.

Many practitioners continue to use the Circular 230 disclaimer in their e-mails even though the IRS finalized regulations that remove the covered opinion rules, Hawkins said on a *Tax Talk Today* webcast.

The IRS on June 9 finalized Circular 230 regulations (T.D. 9668 (Doc 2014-14374)), which replaced the covered opinion rules with one standard for written advice under Circular 230 section 10.37. (Prior coverage (Doc 2014-14378).)

"My only concern and my message is, if a disclaimer says 'The Internal Revenue Service says' or 'I am required under Circular 230,' I can promise you that you will get a letter from my office asking you to cease and desist using that kind of language because I don't want taxpayers to be misinformed," Hawkins said. "We do not require that language after last week."

Once Subject to Circular 230, Always Subject to Circular 230

After a practitioner submits a Form 2848, "Power of Attorney and Declaration of Representative," granting them power of attorney, OPR will treat the practitioner as covered by Circular 230 for all purposes, Hawkins said in response to a question regarding her office's interpretation of *Loving v. IRS*, No. 13-5061 (D.C. Cir. 2014) (Doc 2014-3158). She has said that filing a Form 2848 extends beyond the authority addressed in *Loving*. (Prior coverage (Doc 2014-11772).)

"We can't be expected to guess when the next time is that you might make yourself a practitioner, so we treat you as a practitioner for all purposes," Hawkins said.

Lawyers who practice in other areas, such as family or bankruptcy law, and who file a Form 2848 to obtain their client's tax returns are subject to OPR jurisdiction the minute they put their power of attorney into the system, Hawkins said.

A line item on Form 2848 says explicitly that the signer acknowledges that he is covered by Circular 230. "You may never read that stuff, but you acknowledge by signing it," Hawkins said.

OPR Tracking Practitioner Penalties

OPR has a database of penalties that field agents apply in exams that should be referred to OPR, Hawkins said. Agents are required to refer penalties under sections 6700, 6701, 6694(b), and 6695, but they are not consistently doing so, she said.

Hawkins said she encourages agents to refer discretionary referral penalties, such as those under section 6694(a), because that may expose a practitioner's pattern of behavior.

"This is an area where OPR will start triggering its own inventory because the field hasn't gotten the message," Hawkins said.

New OPR Regional Offices

The IRS budget allows for OPR to open one regional office away from Washington in 2015 and two additional regional offices in 2016, Hawkins said. She added that OPR is still looking for the right locations but that a regional office on the West Coast is "a sure bet." OPR also is considering opening a regional office somewhere in the middle of the country, with Chicago and Dallas as possibilities, she said.

Currently, if practitioners want an in-person hearing, they must travel to Washington because that office is the only location where OPR holds the hearings.