

# The Office of Professional Responsibility

Mission and Structure

# OPR Authority and Delegation

- Delegated to the IRS Commissioner
- Direct report to the IRS COMMISSIONER
- Authorized under Title 31 **NOT** Title 26

Director Office of Professional Responsibility reports directly to the IRS Commissioner.

## **IRS Mission**

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

# **OPR Mission**

To set, communicate, and enforce standards of competence, integrity and conduct among Circular 230 professionals.

# **OPR Vision**

Improve voluntary tax compliance through fair and comprehensive outreach and oversight for Circular 230 professionals.

# **Office of Professional Responsibility**

## **Organization Chart**

**Director, Karen L. Hawkins**

**Senior Operations Advisor, Helene Bayder**

**Deputy Director, Terri McField (Acting)**

**Senior Counsel, Brinton Warren**

**Senior Analyst, Robert Johnson**

**Chief, Enforcement 1 Branch, Laura Zelman (Acting)**

**Chief, Enforcement 2 Branch, Patrick McDonough**

**Chief, Case Development and Licensure Branch, Nadine McPhail**

**Tech Project Manager, John Brueggeman**

# Current Jurisdiction

- CPAs & Attorneys who practice before the IRS
- All Enrolled Agents, Enrolled Retirement Plan Agents
- Enrolled Actuaries
- Appraisers who submit appraisals supporting tax positions

# 2011 Jurisdiction

- CPAs & Attorneys who practice before the IRS
- All Enrolled Agents, Enrolled Retirement Plan Agents
- Enrolled Actuaries
- Paid Tax Return Preparers
- Appraisers who submit appraisals supporting tax positions

# Misconduct Subject to Disciplinary Action

Four broad sources of misconduct:

- When advising taxpayers on filing positions or transactions
- During taxpayer representation before IRS
- On practitioner's own return
- External misconduct- moral turpitude

# OPR Complaint Process

- Sources of complaints:
  - From IRS divisions and employees, other government agencies, tax practitioners and private citizens
- Determine OPR Jurisdiction
- Evaluate Potential of a Violation of Circular 230

# Alternative Disciplinary Approaches

- Issuance of a “Soft Letter” (compliance and conduct)
- Issuance of a “Soft 60-Day Letter” (compliance)
- Issuance of a Notice of Allegation (conduct)
- Deferred Disciplinary Agreement (both)

# OPR Complaint Process

- Issue Notice of Allegation
  - A report of suspected misconduct was forwarded to this office.
  - The report suggests that you may have violated one or more regulations governing practice before the IRS.
  - Allegations include.....
  - OPR will begin an investigation
  - If you possess relevant information which you believe will help resolve the allegation(s), please submit it now.

# OPR Complaint Process (Continued)

- Investigation
  - *Documentation*
  - *Database Searches*
  - *Witnesses*
  - *Other*
- Dispute
  - Conference Opportunity
  - Settlement Opportunity
- Administrative Hearing
  - Administrative Law Judge (ALJ)
- Appeal Process
- Sanction

# Deferred Disciplinary Agreement

- Practitioner Offers and Consents to Agreement in Lieu of a Disciplinary Proceeding Being Instituted or Continued.
- Practitioner Admits to Relevant Violations of Circular 230.
- Practitioner Offers Consent to Suspension.

# Deferred Disciplinary Agreement

- OPR Accepts Offer and Agrees to Refrain From Imposing and Publicizing the Terms of Suspension, Contingent On:
  - Stay in Compliance For 5 Years
  - Withdraw All Outstanding Forms 2848 Within 60 Days
  - Agree Not to Submit Any Forms 2848 to the IRS or Attempt to Practice Before the IRS.
  - If Default, Expedited Suspension Procedures of Section 10.82 Apply.

## **Expedited Suspension - § 10.82**

- Loss/Suspension of State License
- Criminal Conviction under Title 26
- Any Crime involving Dishonesty/Breach of Trust
- Any felony rendering Unfit to Practice
- Civil/Criminal Sanctions (including injunctions)  
re: any taxpayer's or practitioner's own tax liability,  
for
  - Delay
  - Frivolous/Groundless Arguments
  - Failing to Pursue Available Admin. Remedies

# Available Sanctions

- Letter of Reprimand  
(private – may include “soft letter”)
- Censure
- Suspension
- Disbarment
- Monetary Penalty

# **Title 31 - Monetary Penalty**

- American Jobs Creation Act 2004
- Penalty amount up to 100% gross income derived (or to be derived) from misconduct
- Can be in addition to, or in lieu of, other sanctions
- Only sanction available against firms
- Assessment and collection issues

# Practitioner Tax Non-Compliance

- Personal
- Business Entity
- Employment Taxes

# Circular 230 – Duties Owed To the Client

- Exercise Due Diligence (§10.22)
- Contingent Fees & Negotiating Checks (§10.27/10.31)
- No Conflicting Interests Without Consent (§10.29)
- Return of Records (§ 10.28)
- Advertising and Solicitation (§ 10.30)
- Advising of Errors and Omissions and their Consequences (§ 10.21)

# Circular 230 – Duties Owed to the System

- Unreasonably Delay Pending Matters Before the IRS (§10.23)
- Assisting Suspended Practitioners in Practice Before the IRS (§10.24)
- Providing False or Misleading Information to the IRS (§10.51(a)(4))
- Signing Returns, Advising on Positions on Submissions in a Manner which Violates §10.34
- Engaging in Contemptuous Conduct (§10.51(a)(12))
- Failing to Submit Records or Information to the IRS Upon Lawful Request (§10.20(a))
- False or Misleading Opinions (§10.51(a)(13))

# Title 26 Penalties – Mandatory Referrals

- 6694(b) Willful attempt to understate the liability for tax
- 6700 Promoting abusive tax shelters
- 6701(a) Aiding and abetting understatement of tax liability (appraisers)
- 7407 Action to enjoin Tax Return Preparers
- 7408 Action to enjoin specific conduct re: tax shelters and reportable transactions.

## ***Title 26 Penalties – Discretionary Referrals***

- 6662 Accuracy related penalty with facts suggesting lack of due diligence
- 6694(a) Negligent or intentional disregard of tax rules and regulations  
(Need a Pattern)
- 6695(a) Failure to furnish copy of return
- 6695(b) Failure to sign a tax return

## ***Title 26 Penalties – Discretionary Referrals***

- 6695(d) Failure to keep copy of tax return or a list of taxpayers for 3 years
- 6702 Frivolous tax returns or submissions
- 7206 Fraud and false statements
- 6111 and 6112 Failure to comply with tax shelter registration requirements

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### **Final Case Dispositions on Tax Professionals**

- Final regulations issued under Circular 230 on September 26, 2007 allowed the Office of Professional Responsibility (OPR) to publish decisions on its cases, once they become final agency decision. A decision becomes the final agency decision at one of two points

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- 1) After an administrative law judge issues a decision and either party has not appealed the decision to the Secretary of the Treasury or his designee within 30 days, or;
- 2) After the Secretary of the Treasury or his designee has issued his or her decision. Although the practitioner may further appeal the decision of the Secretary of the Treasury to the Federal District Court, the decision may be made public, and the term of any suspension or disbarment will begin, at that point.

Final Agency Decisions

Final Agency Default Decisions

# Contacting OPR

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