

Defending You! The OPR Hearing

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TRN
TAX REP NETWORK

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Ethical Obligations

- ▶ We are all tax practitioners – government and private
- ▶ Familiar with Circular 230?
- ▶ Circular 230's Five Subparts and Table of Contents

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TAX REP NETWORK

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Ethical Obligations

▶ Common Goal

- The voluntarily compliant, self-assessing taxpayer's obligation is **mandatory** – See IRC Section 6011(a)
- ▶ Studies show that when taxpayers believe that the IRS is not held to a standard of conduct but is there only to collect a tax that voluntary compliance falls off
- ▶ Voluntary compliance costs 50 cents for every \$100 tax collected
- ▶ Return on enforcement is not even close

Ethics



- ▶ How we are supposed to approach problems?
- ▶ The standard we will be held to in handling our professional responsibilities
- ▶ “We” meaning both sides, all practitioners
- ▶ Competently, Diligently and Reputably

Practical Approach

- ▶ If IRS agents see what we did, will we be embarrassed or proud
- ▶ Expect what you say and do will be brought to light
- ▶ Do NOT risk your credentials for any one taxpayer



The IRS Mission

- ▶ Dual aims
 - Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities, and
 - Enforce the law with integrity and fairness to all
 - [IRM 10.5.1.1 (09-24-2020)]

The IRS Mission

- ▶ This makes sense in the context of our voluntary compliance system
 - In the United States, Congress passes tax laws and taxpayers are required to comply with those laws
 - The taxpayer's role is to understand and meet his or her tax obligations
 - The IRS' role is to help the large majority of compliant taxpayers with the tax law, while ensuring that the minority who are unwilling to comply pay their fair share are held accountable and face potential civil and/or criminal tax enforcement

The Ethics Rules

- ▶ Internal Revenue Code
- ▶ Tax Court Rules of Practice & Procedure
- ▶ ABA Model Rules – Lawyers
- ▶ Circular 230 – Applies to Attorneys, CPAs and Enrolled Agents
 - Treasury Regulations to Interpret Practice Before the IRS (31 U.S.C. 330)
- ▶ NAEA Code of Ethics & Rules of Professional Conduct
- ▶ AICPA Statements on Standards for Tax Services (“SSTS”)

Office of Professional Responsibility (“OPR”)

- ▶ Handles complaints against private tax practitioners
- ▶ Distinct Conflict of Interest: IRS is who we face off against and is also the same body that can decide to punish us
- ▶ Turning you into its police force
 - EITC and S Corps cases

Office of Professional Responsibility

- ▶ OPR oversees tax practitioners
- ▶ Conduct enforcement
- ▶ Focus on suitability and fitness to practice before the IRS
 - a. Gross negligence
 - b. Willful – voluntary intentional violation of a known legal duty

Andover, MA 01812

EFIN: [REDACTED] and all
associated EFINs

[REDACTED]

Dear [REDACTED]:

We have contacted you regarding your suitability review.

Our records show that:

You have a balance due on Form 941 for the fourth quarter of 2008, all four quarters of 2009, and the first, second and third quarters of 2010, with no Installment Agreement. The balances due may include tax, interest and/or penalties. You may contact our Customer Service at 1-800-829-1040 to establish an Installment Agreement.

We are recommending suspension from participation in IRS e-file for two years.



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Penalties

- ▶ Taxpayer accuracy related penalty: IRC § 6662
- ▶ Preparer penalty assessment: IRC § 6694
- ▶ Principal of general deterrence



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OPR Referrals

Mandatory referral to OPR when IRS Examiner proposes a penalty under 6694(b) (Willful/Reckless Conduct), 6700 (Promoting Abusive Tax Shelters), 6701 (Aiding/abetting understatement of tax)

- ▶ Soft Conduct Letter
- ▶ Reprimand Letter
- ▶ Cease & Desist Letter
- ▶ Suspension Letter
- ▶ Disbarment

Misconduct in Offers

- ▶ IRM 5.8.10.9
- ▶ Failure to practice due diligence
- ▶ Deceptive Advertising

OPR

- ▶ What I have learned in representing tax practitioners before OPR:
 1. We MUST maintain our own compliance
 2. If you pay the preparer penalties, you must file for the refund
 3. Could be viewed as an admission

The Non-Filer

- ▶ Has not filed returns in many years
- ▶ Is a CPA partner at a firm
- ▶ Received the notice from OPR that they will move to suspend him for not filing
- ▶ He files the most recent 6 years of returns to get into compliance

The 2nd OPR Letter

On July 31, 2019, the Office of Professional Responsibility (OPR) served you with an Order to Show Cause (OSC) why you should not be suspended from practice before the Internal Revenue Service. As evidenced by the enclosed Order Regarding Indefinite Suspension, a determination has been made to not suspend you from practice before the Internal Revenue Service.

The basis for the OSC was your repeated failure to file required Federal tax returns. In response to the OSC, you explained, and we have confirmed, that you are no longer noncompliant with any of your Federal tax-filing obligations.

Although you filed some of your delinquent tax returns, you did so only after being served with an order from the OPR to show cause why you should not be suspended from practice. By all appearances, you filed the returns solely to avoid suspension. You did not of your own accord file the returns when they were legally due. Your failures to file were

The 2nd OPR Letter

numerous and largely repeated across consecutive years—in short, you engaged in a pattern of non-filing. Willfully failing to file required tax returns on time is "disreputable conduct" described in section 10.51(a)(6) of Circular 230, for which a practitioner can be sanctioned. Additionally, you have unpaid tax liabilities (including assessed penalties (or additions to tax) and interest) for taxable years 2011, 2013, 2014, 2015, 2016 and 2017. Although a practitioner's disregard of requirements to pay internal revenue taxes is not actionable in an expedited suspension proceeding conducted pursuant to section 10.82 of Circular 230, the conduct is otherwise subject to disciplinary sanctions.

The facts and circumstances surrounding your noncompliance with filing and payment obligations indicate that your conduct was willful and violated Circular 230. As noted above, the OPR is closing the case associated with the expedited suspension proceeding that was commenced with the OSC. Because of the seriousness of your unprofessional conduct, however, we are considering further action under Circular 230. Accordingly, accompanying this letter and the enclosed Order is an allegation letter specifying the apparent violations of Circular 230 and requesting a written response from you addressing the allegations. Please read that letter carefully and timely respond to it with any explanatory or other information that you believe will assist us in making a determination as to any appropriate case resolution.

Circular 230 Section 10.82

- ▶ 10.82(a) allows for expedited suspension:
- ▶ b(5) (i) Failing to make an annual Federal tax return 4 out of the last 5 years
- ▶ (ii) Failing to make a return required more frequently than annually (i.e. employment tax) – 5 out of the last 7 periods

Circular 230 Section 10.60

- ▶ (a) The practitioner may be reprimanded or, in accordance with §10.62, subject to a proceeding for sanctions described in §10.50.
- ▶ (b) An appraiser who has acted willfully, recklessly, or through gross incompetence may be reprimanded or, in accordance with §10.62, subject to a proceeding for disqualification.

~ Authorized by statute: 31 USC 330(d)

What we did

- ▶ Got the client into a streamlined IA agreement ASAP
- ▶ Responded in writing that he had taken steps to resolve the outstanding balance
- ▶ Requested deferred punishment: so long as he is compliant for 5 years there will be no reason to suspend him, as he is not a menace to society and has never been accused of doing anything unethical with the returns he filed

Questions



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