

Tax Notes Today

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OPR Targeting Preparers Compensated Through Shared Refunds

By Amy S. Elliott

The IRS Office of Professional Responsibility is cracking down on return preparers who take their fee out of a portion of their clients' tax refunds, OPR Director Karen Hawkins said May 14.

"It is an absolute violation of Circular 230, and it's something that I take really quite seriously, so we have actually been pursuing some of those," Hawkins said during a Tax Talk Today webcast sponsored by the IRS and the National Association of Enrolled Agents.

Preparers who choose to break the rules can take part of a client's refund either 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.

"I see way too many return preparers who do self-help to get themselves paid," Hawkins said, adding that even if the preparer has the client's permission to split the refund, it is still a violation of Circular 230.

Taking a preparer fee out of a refund violates not only conflict of interest rules, but also Circular 230 section 10.31, Hawkins said. That section provides 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."

Section 10.31 "is one of the earliest and oldest provisions in the circular," Hawkins said, adding, "The government generally feels quite strongly about people taking other people's government checks."

Frank Degen, immediate past president of the National Association of Enrolled Agents, noted that section 6695(f) also imposes a \$ 500 penalty on preparers who endorse another taxpayer's tax refund check unless it's to deposit it in full in the taxpayer's bank account. "So weigh your fee versus this \$ 500 penalty -- it's not a good business model to operate under," he said.

Hawkins said that she's sympathetic to the many preparers "that are in environments where it's a little dicey about getting paid by your client.

"I appreciate that at one level," she said. "But you can't do it."

The proposed Circular 230 regulations would revise section 10.31 so that it covers "payment made by any means, electronic or otherwise." But, Hawkins noted, "We have legal opinions outside of Circular 230 that say this."

Despite ongoing litigation calling into question the IRS's ability to enforce regulations governing its tax return preparer registration program, "as a technical matter there would be bases on which I could . . . say that I have jurisdiction over return preparers," Hawkins said.