

Tax Notes Today

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IRS TO REEXAMINE WHICH FORMS WILL REQUIRE PTINS, HAWKINS SAYS

By Shamik Trivedi

The **IRS** will reexamine the necessity of requiring preparer tax identification numbers for filing some forms in the employee benefits area, **IRS** Office of Professional Responsibility Director Karen Hawkins said October 22.

Speaking at a joint Employee Benefits session at the American Bar Association Section of Taxation meeting in Denver, Hawkins said that the **IRS** review originally conducted to determine which forms would require a paid preparer to have a PTIN "was not as robust as it should have been." The review is being revisited, in part because of feedback from practitioners and various divisions within the **IRS**, she said.

Specifically, forms 5309, "Application for Determination of Employee Stock Ownership Plan," and 5330, "Return of Excise Taxes Related to Employee Benefit Plans," are being reconsidered. Those forms currently require a paid preparer to have a PTIN but may not in the future, she said. "I would expect you're going to see a notice at some point in time," Hawkins said, adding that it may not come in time for the December 31 PTIN renewal deadline.

Nonetheless, Hawkins advised that those practitioners who practice exclusively in those areas that require forms 5309 and 5330 wait as long as possible to renew their PTINs. "You might want to hold off and see if the **IRS** can be fast enough about getting a notice out before December," she said.

Broad Circular 230 Application

Hawkins also reemphasized OPR's authority over individuals and firms that advise or prepare check-the-box pension arrangements. Those practitioners who may not necessarily practice before the **IRS** but prepare documents that have tax consequences, such as an employee severance agreement that has section 409A consequences, could be brought into OPR's jurisdiction under new Circular 230 section 10.8(c), she said. (For the OPR guidelines on sanctioned practitioners, see Doc 2011-18168 or 2011 TNT 165-15. For prior coverage, see Doc 2011-18156 or 2011 TNT 165-1.)

Under section 10.8(c), which was added in August, a paid preparer who prepares all or a substantial portion of a document that pertains to a taxpayer's tax liability and that would be submitted to the **IRS**, even if in the future, would fall under OPR's jurisdiction, Hawkins said.

"Someone who is being paid to prepare a document like that could indeed become subject to Circular 230, even though as a technical matter they aren't necessarily a practitioner," she said.

Hawkins said section 10.8(c) was added to Circular 230 to expand OPR's jurisdiction to broker and insurance agents working for larger organizations that market products, such as retirement plans, that have tax consequences. "With a couple of checks of a box, [those individuals] are significantly impacting what the meaning of that document might be, depending on what box they check," she said. That holds true even though those documents may be pro forma and broadly acceptable by the **IRS**, she said.

"The very act of checking one box versus another box makes that a very different pro forma document, and so that suddenly becomes a substantial portion of that preparation of that particular document, and if it's of the kind that ends up being submitted at some point in time, I certainly would attempt to use [section] 10.8(c)," Hawkins said, adding that that would force the non-practitioner broker or insurance agent to comply with the due diligence requirements found in Circular 230.