



Treasury Inspector General for Tax Administration Office of Audit

TAX PRACTITIONERS PROMOTING ABUSIVE TAX SHELTERS ARE STILL ABLE TO REPRESENT TAXPAYERS BEFORE THE INTERNAL REVENUE SERVICE

Issued on February 20, 2009

Highlights

Highlights of Report Number: 2009-10-039 to the Internal Revenue Service Director for the Office of Professional Responsibility.

IMPACT ON TAXPAYERS

The Office of Professional Responsibility (OPR) plays an important role in regulating the conduct of licensed tax professionals who act as power of attorneys for taxpayers who might be involved in an audit, collection issues, or appeal of an Internal Revenue Service (IRS) determination. The OPR was unaware of a significant number of licensed tax practitioners who were assessed penalties, sentenced in a criminal proceeding, or enjoined for tax shelter violations. As a result, these tax practitioners were still eligible to represent taxpayers before the IRS. Practitioner misconduct can serve to erode public confidence in the tax system and create unfortunate consequences for taxpayers relying on unscrupulous tax practitioners.

WHY TIGTA DID THE AUDIT

This audit was initiated because abusive tax shelters are an area of concern to Congress and continue to present formidable challenges to the IRS. A 2006 Senate report included an estimate that Americans now have more than \$1 trillion in assets offshore and illegally evade between \$40 and \$70 billion in United States taxes each year through the use of offshore tax schemes alone.

The overall objective of this review was to determine whether the OPR is effectively identifying and taking appropriate actions against those licensed tax practitioners who have employed or promoted abusive tax shelters.

WHAT TIGTA FOUND

TIGTA found that the OPR was unaware of a significant number of licensed tax practitioners who were assessed penalties, sentenced in a criminal proceeding, or enjoined for tax shelter violations because this misconduct may not have been referred by IRS employees as required. As a result, the OPR did not

initiate an investigation to determine whether any sanctions were necessary to prevent disreputable practitioners from continuing to be allowed to represent taxpayers. Specifically, the OPR was not aware of 160 practitioners assessed tax penalties, permanently enjoined by a Federal Court, or criminally sentenced for abusive tax shelter activities. These practitioners are still eligible to represent 9,766 taxpayers before the IRS.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the Director, OPR, determine whether additional disciplinary actions are warranted for the tax practitioners penalized, permanently enjoined, or criminally sentenced for abusive tax shelter violations; establish written procedures for controlling and reviewing case referrals on the inventory system; undertake additional outreach efforts with other IRS functions to increase awareness of the requirement to refer to the OPR licensed tax practitioners involved in disreputable behavior; and develop a methodology when resources become available to proactively identify licensed tax practitioners who might have engaged in disreputable activity.

In their response to the report, IRS officials agreed with all of our recommendations. The Director, OPR, plans to review the 143 identified tax practitioners penalized for abusive tax shelter actions and take appropriate action. Further, the OPR plans to ensure that each of the nine cases involving abusive tax shelters injunctions and the eight cases involving practitioners subject to criminal prosecution are reviewed for appropriate action. If these individuals do not fall within the jurisdiction of the OPR, appropriate jurisdictional and disciplinary decisions will be made. In addition, the OPR plans to revise the guidelines governing the control and processing of each complaint. The OPR also plans to continue to provide awareness training to both internal and external stakeholders to ensure that licensed tax practitioners involved in potentially disreputable behavior are brought to the attention of the OPR and are appropriately sanctioned. Finally, the OPR plans to develop and sustain a more proactive model of case identification and development, as resources permit.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full IRS response, go to:

<http://www.treas.gov/tigta/auditreports/2009reports/200910039fr.pdf>.

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