Ethical Challenges for the Nonprofit Organizations Advisor

January 24, 2020

UT Law Nonprofit Organizations Institute

Panelists:

Meghan Biss, Caplin & Drysdale

Bridget Weiss, Arnold & Porter

Agenda

- Overview of IRS Office of Professional Responsibility
- Overview of Circular 230 and State Rules
- Case Studies
  - Applications for Tax-Exempt Status
  - Form Preparation
  - Written Opinions

What Rules Apply?

- Circular 230 – Regulations Governing Practice Before the IRS (applicable to all tax "practitioners")
- State Courts/Bar Associations – Rules of Professional Conduct (applicable to attorneys)
- AICPA Code of Professional Conduct & Statements on Standards for Tax Services (applicable to CPAs)
- IRC provisions
  - §§ 6694, 7407 (applicable to "return preparers")
  - § 6701 (applicable to advisors or preparers)

Overview of Circular 230

- "Practice before the IRS" is defined in Circular 230 § 10.2(a)(4) as
  - "all matters connected with a presentation to the [IRS] relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by" the IRS
- Such presentations include, but are not limited to:
  - Preparing documents
  - Filing documents
  - Corresponding and communicating with the IRS
  - Representing a client at conferences, hearings, and meetings
  - Rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion

Overview of IRS OPR

- OPR created in 2003
- OPR has exclusive responsibility for discipline, including disciplinary proceedings and sanctions
  - Circular 230 – Regulations Governing Practice Before the IRS
  - "Practice before the IRS" defined in §10.2(a)(4)
    - "all matters connected with a presentation to [IRS] relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by" the IRS (e.g., preparing and filing documents, correspondence with IRS, including conferences and meetings, written advice)
    - narrowed by *Loving v. IRS*, 742 F.3d 1013 (DC Cir. 2014):
      - Statutory authority for Circular 230 does not cover preparation of tax returns – thus, portions of Circular 230 covering return preparers are invalid

Overview of IRS OPR

- How does OPR get involved?
  - Referrals and complaints from IRS divisions and employees, other government agencies and authorities, tax practitioners and taxpayers
  - In general, OPR does not become involved in any matter until it is concluded
- Interpretative guidance
- No ability to consult OPR to get an opinion
  - In contrast to State Bar rules

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Ethical Challenges for the Nonprofit Organizations Advisor

Also available as part of the eCourse
2020 Nonprofit Organizations eConference

First appeared as part of the conference materials for the
37th Annual Nonprofit Organizations Institute session
"Ethical Challenges for the Nonprofit Organizations Advisor"