Office of Government Ethics
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Letter to a Government Official dated January 11, 1982

This responds to your December 3, 1981 request for the opinion of the Office of Government Ethics on the impact of the post-employment restrictions of 18 U.S.C. § 207 on the activities of a former Internal Revenue Service employee who served as a revenue agent.

You state that during the period from September 1978-April 1980, the employee examined a taxpayer's Federal income tax returns for the years 1975, 1976 and 1977 and as a result of her examination recommended the assessment of a tax deficiency. Apparently the taxpayer agreed to the assessment and purportedly sent the Internal Revenue Service a check covering the deficiency. The taxpayer received a notice from the Internal Revenue Service stating the deficiency had not been paid. The taxpayer then contacted the former revenue agent's current employer, a certified public accounting firm, to assist in resolving the matter. The taxpayer executed a power of attorney authorizing the former employee, her supervisor and another certified public accountant to represent him. The former employee then wrote to the Internal Revenue Service and stated that the taxpayer would like to agree to the proposed audit changes. The letter went on to state that the taxpayer did not have a copy of the revenue agent's report showing the deficiency, and further, the taxpayer had sent a check for the deficiency. The letter asked for the report and if the taxpayer's payment had been properly applied. The power of attorney was enclosed with the letter. Before there was further action in the matter, the employee resigned from the accounting firm. Subsequently, the case was settled by the accounting firm sending the Internal Revenue Service a second check for the deficiency.

We view this case as revolving around the issue of whether a letter from a former Government employee to her former agency should be construed as a communication made with the intent to influence. It is clear that the examination of the tax records by the revenue agent with the subsequent recommendation of an assessment of a tax deficiency is the same particular matter involving a specific party which is the basis for the bans imposed by subsection (a) of 18 U.S.C. § 207. However, based on

the facts as recited above, it does not appear that the former employee engaged in the requisite prohibited representational activities necessary to invoke the bans envisioned by section 207(a).

Communications made with the intent to influence one's former agency are considered representational appearances. However, communications which do not include an "intent to influence" are not prohibited. 5 C.F.R. Part 737.5(b)(5) points out that acting as agent or attorney in connection with a routine request not involving a potential controversy is permissible.

If the taxpayer agreed to the assessment and the subsequent communication to the agency simply pointed out that a check had been tendered, we are unable to establish a necessary element, that of a potential for controversy. It is our understanding that the release of a copy of the revenue agent's report is purely ministerial in nature and does not involve discretionary powers of the agency. We are further persuaded by the fact that after submitting the letter, the former employee took no action which could be construed as representational in nature.

This is a very close case and obviously if the tenor of the remarks contained in the former employee's letter imparted more than just a request for documentation and an explanation that a check had already been tendered, we would be inclined to reconsider imposition of administrative action in accordance with the provisions of 5 C.F.R. § 737.27.

Sincerely,

J. Jackson Walter
Director