Justice Department Tax Division Head Says Sky Isn't Falling

by Nathan J. Richman

The acting head of the Justice Department's Tax Division described the ongoing plan to split the division into separate sections in two other department divisions.

"Reports of our death are greatly exaggerated," Karen E. Kelly, acting deputy assistant attorney general of the Justice Department Tax Division, said June 27 at a conference sponsored by the New York University School of Professional Studies.

The Trump administration's idea to fold the Tax Division into other parts of the Justice Department has been percolating for months — first as the idea to send its lawyers to the various U.S. attorneys' offices, and then to split the division between the criminal and civil divisions. The Justice Department's budget request for 2026 formally adopted the latter plan.

Tax attorneys have expressed their anxiety over the plans.

Former federal prosecutor Rod J. Rosenstein, now with Baker McKenzie, said at the conference that nearly all former division personnel and members of the tax community have objected to the idea of splitting up the Tax Division.

Kelly responded that while the plan from the Justice Department budget proposal isn't final, it is progressing with the goal of completion by the end of the summer or at least the end of the fiscal year.

There are some Tax Division regulations that will need to be amended and that work is ongoing, Kelly said. Afterward, she told *Tax Notes* that those revisions will proceed through the standard notice of proposed rulemaking process.

The regulatory change will include tweaking the language in the Tax Division's directives to fit the new tax sections, Kelly told the conference.

Part of Kelly's message was for the tax community not to worry and allow time to see how the reorganization works. "Change feels uncomfortable," she said, adding that it was likely part of why it has seemed like many Tax Division employees began looking at other opportunities, especially in reaction to the initial plan to send them all over the country.

Kelly said there had been a lot of anxiety at the Tax Division, but the new plan for staff to remain in Washington reduced the temperature.

Specifics

Some of the Tax Division's front office and support staff will be reassigned to similar functions in the main Justice Department, according to Kelly. The primary civil and criminal tax functions from the Tax Division would shift to new sections within the department's civil and criminal divisions, respectively, she said.

The Tax Division's civil and criminal arms will remain siloed within their new homes, Kelly said, adding that the same attorneys will be filling the same roles, just in those new silos.

Three hundred full-time Tax Division employees will move to the Civil Division tax section, and 100 prosecutors will end up in the Criminal Division tax section, according to Kelly.

The tax section within the Criminal Division will be tasked with reviewing all the tax charges brought in federal courts in the same way the Tax Division has done, Kelly said. That should preserve the uniform application of the tax law that professionals expect from the Tax Division, she said.

Plus, the tax sections' trial attorneys will still be based in Washington and travel around the country when called on to assist U.S. attorneys' offices as the Tax Division does now, Kelly said.

Supervision of tax cases by specialists who had been in the Tax Division will continue, according to Kelly. That could include giving some litigators a nudge when statutes of limitation are about to expire, she said.

Kelly assured the audience that the Civil Division tax section will retain the Tax Division's power to overrule the IRS when it deems it necessary. As for what would come of the Tax Division's role in preserving interpretation of tax law between civil and criminal functions, she said uniform application across the country stems from prosecutors' assurance that the defendants in different places are treated the same.

The current plan will retain the possibility for tax lawyers to request conferences with the specialists who approve tax charges before those cases are brought, Kelly said.

There should still be a sense at the Justice Department that tax cases are different, according to Kelly.

The tax sections should have already appeared in the civil and criminal divisions' budget lines, and tax cases are fifth on the list of the Criminal Division's priorities, Kelly said.

Initial Reactions

Rosenstein said many tax community members are concerned that the Tax Division's mission of protecting innocent taxpayers could be lost with the reorganization.

After Kelly's presentation, some tax professionals sounded hopeful, with Mark C. Milton of Milton Law Group telling *Tax Notes* that it sounds like tax enforcement won't suffer because of the change.

The initial overreaction may have been exaggerated, and there may be some possible streamlining in the end, said Milton, a former employee of the civil section of the Tax Division.

Milton agreed with Kelly's suggestion that the presence of the tax litigators among the general Justice Department attorneys could entice those other attorneys to switch to tax functions.

Jeffrey Neiman of Marcus Neiman Rashbaum & Pineiro LLP said the dismantling of the Tax Division may have been less likely if a Senate-approved assistant attorney general had been in place with the prestige and political juice to advocate for it.

Despite requests from the tax community, there hasn't been a Senate-approved Tax Division head since Kathy Keneally left in 2014. Neiman was a former Tax Division prosecutor and assistant U.S. attorney.

Other professionals tilted a bit more anxious about what lies ahead.

The Justice Department needs to be sure it protects taxpayer rights during the process of moving the Tax Division into the separate tax sections, National Taxpayer Advocate Erin Collins said.

Glen Frost of Frost Law anticipates lots of adjustments during the transition, saying those changes will slow tax administration in the meantime.

"I'm worried, but we shall see" what happens, Michele F.L. Weiss of Holtz, Slavett & Drabkin APLC said.

"With change comes at least some amount of chaos, and I anticipate nothing less here. There will be disruption and I hope the government and practitioner community will work together to get through it," Michelle F. Schwerin of Neill Schwerin Boxerman PC said. ■