



“Service to the Tax Profession”

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NSTP COMMENTS ON IRS TAX RETURN PREPARER INITIATIVE

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Introduction

Our organization, the National Society of Tax Professionals (NSTP), is comprised of tax practitioners with varying types of professional credentials and different levels of practice. Thus, we are uniquely qualified to offer our membership’s views on Treasury’s proposal for a comprehensive plan regulating tax return preparers. We have been tracking the comments received by the IRS thus far and want to focus our comments on the specific proposals set forth by other participants in this process.

About NSTP

The National Society of Tax Professionals (NSTP), a nonprofit organization founded in 1985, coined the term “tax professional” and is made up of approximately 5000 members who are certified public accountants, attorneys, enrolled agents, financial planners, and other tax professionals. About one-half of our members are unenrolled preparers. NSTP supports the tax professional community with educational programs designed to enhance professional ability and knowledge. Every NSTP Member is required to abide by the NSTP Code of Professional Conduct which is designed to promote high

standards of competence and ethics within the profession and to promote mutual respect, cooperation and communication between the Internal Revenue Service and tax professionals.

Summary of Recommendations

The tax system should encourage the use of reasonably priced tax preparation services, especially by less sophisticated taxpayers who have difficulty filing their own returns. The IRS should carefully target any new regulatory scheme at the known abuses, while being careful not to overburden the honest, ethical tax preparers who currently practice with a high degree of professionalism.

With these principles in mind, we contend that any new regulatory scheme for tax professionals should be based on the following basic principles:

- All paid preparers should be registered with the IRS and should be assigned a preparer tax identification number (PTIN) which they are required to use on all returns.
- All paid preparers should be required to complete a minimum number of hours annually

of continuing professional education including 2 hours of ethics training.

- Unenrolled tax preparers should not be subject to an entry examination to qualify for preparing returns. For this segment of the practitioner community, testing does not demonstrate actual hands-on ability and is not a fair measure of expertise.
- Many unenrolled practitioners are highly competent and serve their clients well. If they are forbidden to practice going forward, the existing enrolled community could not absorb the overwhelming number of new clients. Tax preparation fees would go up. Many taxpayers could be underserved, and the IRS workload and staffing expense would also increase dramatically due to the overflow.
- The IRS should develop a media campaign to educate the public that a return preparer who does not sign the tax return is breaking the law. We believe it is the “self prepared” returns from unscrupulous tax preparers which account for much of the earned income tax credit (EITC) fraud and other intentionally erroneous tax returns. The IRS should target its enforcement measures at this type of abuse.

Our views on the specific proposals under consideration by the IRS follow.

Competency Exams

At the July 30th IRS return preparer forum, representatives of several consumer groups including the AARP, the National Community Tax Coalition, and the Center for Budget and Policy Priorities advocated examinations as well as continuing education, arguing that the public would better understand a tax preparer’s credentials if testing were required. While we understand their frustration with misconduct by some tax preparers, a testing program will not address the type of abuses these groups are seeking to prevent—primarily, unsigned, erroneous returns and refund anticipation loans. In fact, burdensome and expensive testing could actually harm the populations served by these very groups.

Testing will be a barrier to entry for unenrolled preparers, many of whom now work with underserved populations in rural areas and with lower-income taxpayers. If testing is required, what do you do with the many thousands of tax preparers who have been in practice for years? Administratively, it would be difficult, if not impossible, to test them all at once. Further, it would be unnecessary for many who have practiced for years and have demonstrated expertise.

Frank Degen of the National Association of Enrolled Agents (NAEA) has advocated enrollment-type testing for all unenrolled preparers. Jim Nolen of the National Society of Accountants (NSA) also has advocated that all preparers take some type of qualifying examination to obtain certification such as that now offered by the Accreditation Council for Accountancy and Taxation (ACAT), which is affiliated with NSA. We believe these groups do a good job serving their particular membership. However, it does not escape our notice that the positions they are advocating are self-serving and would greatly extend their reach. Imposing NAEA and NSA certifications on the entire unenrolled industry would be a disservice to taxpayers, making tax preparation services more expensive and less accessible to the vast majority of the public who do not have complicated tax returns but still need help in preparing them. Adopting the certifications of either of these groups also would concentrate oversight in the hands of a few private organizations, which we believe is inappropriate.

Waiving In With No Exam

While we strongly oppose testing, we realize that this option is under consideration by the IRS. Thus, we want to go on record to state that if testing is adopted, there must be a provision for grandfathering experienced tax preparers. We suggest the model used by some State Bar Associations for “waiving in” out-of-state professionals. That is, allow a tax preparer to waive in to the program without testing if they can show they have been practicing for 3 to 5 years and have been regularly signing tax returns during that time. A similar rule already is in place for revenue agents who have worked for the IRS for 5 years. Circular 230 allows them to obtain the Enrolled

Agent credential without testing. In short, if the IRS implements a testing program, there should be some method of becoming grandfathered based on a preparer's demonstrated professional experience.

Alternatives to Testing

PTIN Registration

Practitioner registration should form the cornerstone of the new regulatory scheme. All practitioners should be required to have a unique preparer tax identification number (PTIN) which they must use on all returns. This requirement needs to be enforced by stiff penalties on preparers who prepare a return for any sort of remuneration without signing and inserting a PTIN.

Some commenters have suggested an additional penalty for taxpayers who pay a preparer who does not sign the return. We believe a taxpayer penalty would be unenforceable and would prevent taxpayers from turning in noncomplying preparers. Another option would be to have a series of questions for the taxpayer with regard to who prepared the return. If the taxpayer has to clearly indicate on the return that a paid preparer was not used, it will make the taxpayer more aware that nonsigning preparers are breaking the law. More importantly, a vigorous public relations campaign should be undertaken by the IRS to convince taxpayers of the dangers to them of submitting an unsigned preparer return.

Track Performance by PTIN

Use of a standard PTIN by all preparers will enable the IRS to develop metrics to track a preparer's returns for accuracy. The IRS already statistically analyzes the error rates for taxpayers and paid preparers on return submissions. This program could be expanded to identify practitioners whose returns exhibit a high error rate, a high reversal rate, or any fraudulent positions. Depending on the type of return problems, the practitioner could then be required to take more training courses or could be suspended from practice.

Continuing Professional Education

Circular 230 sets forth continuing education

rules for enrolled agents which require that they take approximately 16 hours of courses per year. Most State Bar Associations require at least 12 hours of continuing legal education each year. State CPA societies generally require upwards of 30 hours of continuing professional education each year.

We are in favor of requiring a minimum number of continuing education hours in taxation each year for unenrolled preparers, including at least two hours in ethics. It seems appropriate that the minimum be set at 12 hours per year given the limited type of practice engaged in by unenrolled preparers.

These preparers could take the courses from any qualifying sponsor as defined in current §10.6(f) of Circular 230. The NSTP currently offers many qualifying courses that are appropriate for the type of practice engaged in by our membership. Thus, we encourage the IRS to allow a wide variety of professional organizations to apply and qualify for course certification.

Office of Professional Responsibility and Circular 230

We do not object to giving the IRS Office of Professional Responsibility (OPR) broader authority to oversee all tax professionals, including unenrolled preparers, to enforce their use of the PTIN and to impose sanctions or suspend from practice those persons exhibiting gross incompetence or fraudulent behavior. However, we do not believe that unenrolled preparers should be subject to all of the very complex and broad rules of Circular 230. Much of Circular 230 is concerned with standards for the issuance of tax opinions, including "covered opinions" and "reliance opinions", which clearly do not apply to the type of services provided by unenrolled preparers. As long as unenrolled preparers continue to be restricted in their practice and subject to the Code's preparer penalties, extension of the complete set of Circular 230 rules to them is overkill.

Rather, the IRS could develop a special subset of Circular 230 rules for unenrolled preparers that includes PTIN registration, ethical standards, and continuing education requirements. Unenrolled

preparers could be subject to the existing enforcement procedures of Circular 230 as well, and OPR would be responsible for sanctioning noncompliant preparers.

Other Observations

We essentially agree with the measures advocated by the National Association of Tax Preparers (NATP) regarding registration of preparers, continuing education requirements, identification of problem preparers, and enforcement measures designed to encourage taxpayers to disclose who prepared their returns. The NATP, much like our organization, is made up of tax professionals with a variety of backgrounds and professional credentials. Thus, our two organizations seek a balanced approach to preparer regulation that recognizes the different segments of the preparer market and the particular type of taxpayer served by each. One size does not fit all in this profession.

We find particularly persuasive the comments submitted by Robert Wunderle of La Posada Tax Clinic in Twin Falls, Idaho. He offers several real world examples of the exact type of abuses the IRS and consumer groups are trying to address. He clearly makes the point that enforcement measures must target those preparers who are unlikely to register or comply with any new testing, education, or ethical standards.

Conclusion

In conclusion, we would like to reiterate the major objectives that we would like to see implemented with any preparer changes:

- Maintain reasonable pricing, especially for less sophisticated taxpayers or those unable to prepare their own returns.
- Any regulatory changes should be targeted at known abuses.
- Current practitioners should not be overburdened by changeover requirements; IRS Office of Professional Responsibility should control and oversee registration, certification and continuing education. These functions should not be put into the hands of any one outside group.

- Preparer Tax Identification Numbers (PTIN) should be issued to all qualified preparers and should be required on all returns.
- Continuing Education, 12 hours per year of tax education, by IRS sanctioned-coursework; Circular 230 “Light” should be developed with standards appropriate for unenrolled preparers.
- No Testing, but a 30-hour basic course in taxation to maintain a PTIN if a preparer is found to have high error rates.
- “Grandfathering in” of preparers with 3-5 years experience and history of signing returns (if testing is required).
- All prepared returns must have a PTIN number, with the error rates tracked, and educational remediation or revocation of PTIN number for fraud or abuse.

Since we as a profession are in a partnership with the IRS, we understand the importance that any new program be mutually beneficial. We believe that our guidelines will lead to lower error rates and less filing abuse and would enhance the competence and reputation of the professional preparer community that we represent.

Further, we are opposed to giving any one group the control over registration, certification, continuing education, or testing. Rather, the IRS Office of Professional Responsibility should oversee the process, with the cooperation, support, and input of the many committed professional groups now serving the tax profession.

On behalf of the NSTP Board, I want to thank you for the opportunity to comment on this important initiative. Please contact me at (703)536-6008 if you have any questions.

Respectfully submitted,

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