

NATIONAL SOCIETY OF TAX PROFESSIONALS

COMMENTS ON PROPOSED USER FEE AND FINGERPRINTING REGULATIONS

National Society of Tax Professionals
910 NE Minnehaha Street, Suite 6
Vancouver, Washington 98665
(800)367-8130 (phone)

REG-116284-11

Comments of Keith E. Huebel, CPA
Government Relations Liaison
National Society of Tax Professionals Board of Directors

Introduction

On behalf of the National Society of Tax Professionals (NSTP), I would like to offer our organization's comments on REG-116284-11, based on the views of our large and diverse membership. The National Society of Tax Professionals is a non-profit organization made up of tax practitioners with varying types of professional credentials and different levels of practice, including enrolled agents, CPAs, attorneys, and experienced unenrolled preparers. The NSTP supports the tax professional community with quality continuing education, expert updates on federal tax developments, and assistance in complying with IRS rules and regulations. All of our members are required to abide by our Code of Professional Conduct.

The National Society of Tax Professionals appreciates the IRS's efforts in supervising the competency level and ethical standards of tax return preparers. We understand this is a costly and burdensome process for all involved, and we want to share some of our concerns relating to the proposed user fees and fingerprinting rules.

Purpose of User Fees

In several sections of the proposed regulations, there are statements explaining that the IRS component of the competency exam and fingerprinting user fees are for background checks on employees of the IRS's third-party vendors. We question the wisdom of making tax return preparers pick up the fees for running background checks on these government contractors. We believe that should be the responsibility of the vendor inasmuch as they have received substantial government contracts and are being authorized by the IRS to collect their own guaranteed fees for these services.

Fingerprinting, Coordination of E-Filing and PTIN Requirements

By far, the most burdensome and troubling requirement in these proposed regulations for our membership is the mandate that all Registered Tax Return Preparers who are not attorneys, CPAs, or Enrolled Agents be fingerprinted by the IRS's fingerprint vendor, even if they have already done so as electronic return originators (EROs). Many of our members were completely vetted with background checks, photographs, fingerprints, etc., when they became e-filers. These tax professionals have had exemplary careers with no problems of any kind. As diligent, honest, and law abiding tax preparers with clean records and years of experience, our members do not understand why they have to go through the entire fingerprinting process again.

From the justifications put forth in the proposed regulations, it appears that the IRS is creating a new fingerprint database in a different format that makes it easier for the IRS to maintain. How many times is the IRS going to ask these professionals to be fingerprinted and pay new fees? Every time the technology changes? In short, our members are paying for the IRS's lack of foresight in maintaining its records. Digital fingerprinting technology has been around for years. The FBI's Integrated Automated Fingerprint Identification System came into existence in 1999. The IRS's need to upgrade its fingerprint storage capabilities should be treated as a general system upgrade and should not be funded by additional fees imposed on tax preparers who have already had their fingerprints submitted to the IRS under previous programs. As one of our members commented, "My prints have not changed."

In addition, the proposed regulations are confusing with regard to the coordination of the fingerprinting requirement for PTINs with the fingerprinting requirement for e-filing. We ask that these rules be clarified, particularly with regard to individuals who were fingerprinted prior to June 8, 2009.

We urge that any tax professional whose fingerprints already have been submitted to the IRS under any other circumstances, most particularly the e-file program, be exempt from having to be fingerprinted again. Further, tax preparers should be allowed to have their fingerprints done at any authorized fingerprint processor, such as state or local police departments. They should not be required to use the IRS vendor, which is more expensive, and, we anticipate, will be much more inconvenient.

Finally, our members feel strongly that the redundant fingerprinting requirement is a misuse of federal authority and private funds. Charging more fees to honest preparers and having their fingerprints resubmitted will not stop those nonsigning preparers who continually do fraudulent returns. Clearly, this is a misapplication of IRS enforcement priorities.

Requirements for Individuals Outside of the U.S.

The regulations state that any participant in the PTIN, acceptance agent, or authorized e-file provider programs who resides and is employed outside of the United States will not have to be fingerprinted to participate in these programs. The proposed rules go on to say that such persons must comply “with all other elements of the suitability check.” We see no reason not to require these individuals to bear the same burdens that U.S. tax return preparers must shoulder, including the fingerprinting requirements. Having them participate will help spread out the costs more appropriately. These individuals obviously do not have to be current in their federal tax return obligations if they are not U.S. citizens, so few elements of the suitability check will be in place for these practitioners under the current scheme.

Exemptions from Fingerprinting Requirements

The proposed rules state that the IRS does not intend to fingerprint attorneys, CPAs, and enrolled agents. We believe that this is an appropriate decision given the fact that most, if not all, of these professionals already have been fingerprinted to obtain their professional titles. We also note that many of these professionals have been fingerprinted as part of the process of becoming an authorized e-file provider. Our position on this exemption is consistent with our position for Registered Tax Return Preparers—that anyone who has been fingerprinted in the past should not have to go through this process again.

Significant Costs to the Profession

The proposed regulations set a \$27 testing fee and a \$33 fingerprinting fee as the IRS portion of the fees imposed on tax practitioners. While these fees may appear minor, with the addition of the vendor fees, the total amount to be collected from the tax professional community is substantial. The IRS stands to collect \$15,180,000 for fingerprinting if one uses the IRS estimate that 460,000 individuals will be fingerprinted under the regulations. This figure is for the IRS portion alone. The IRS component of user fees for the competency exam will add another \$10,000,000, if one-half of the estimated 717,000 PTIN holders take the exam, and even more if test takers have to repeat the test. These figures represent a significant financial burden on tax preparers and on the taxpayers they serve. It is an enormous amount of money for the government to take out of this sector of the economy.

Benefits for Registered Tax Return Preparers

The regulations repeatedly state that PTIN holders and registered tax return preparers are receiving a “special benefit from the IRS that is not received by the general public...” It is true that obtaining the title of “Registered Tax Return Preparer” will give some tax preparers a government-sanctioned, professional designation. However, let’s not lose sight of the fact that, in a free market, taxpayers are entitled to have the preparer of their choice assist them with the mandatory filing and paying of their federal tax liability with as little control and interference from the IRS as possible. Paying one’s tax liability is hardly a matter of choice and the right to engage in the profession of assisting taxpayers in meeting their obligations should be recognized by the IRS as well.

Conclusion

We believe the interests of ethical, professional preparers and the IRS are aligned with regard to improving the quality of tax preparation. However, we also ask the IRS to respect the important role tax preparers play in representing their client’s best interests and in trying to manage a successful service business, frequently with a slim profit margin. We trust the IRS will take these points into consideration in formulating the final regulations.

On behalf of the National Society of Tax Professionals, I want to thank you for the opportunity to present our organization’s views on the proposed rules.

Keith E. Huebel, CPA
National Society of Tax Professionals
Board of Directors

QUOTES

“Day in and day out, your tax accountant can make or lose you more money than any single person in your life, with the possible exception of your kids.”

— Harvey Mackay, syndicated columnist and noted business speaker.

Some NSTP Member Quotes on the Fees and Fingerprinting Regulations:

“My prints have not changed.”

“It makes no sense for a provider that is outside of the U.S. to be exempt from any requirements U.S. tax professionals have to do.”

“So, all the IRS is doing is running ‘little guys’ out of the business by all these costs, time burdens, and annual charges.”

“I can go to the Indiana State Police and be fingerprinted for FREE. Why should I pay the high fees to this company when it can be free?”

“I see this as a financial burden and nuisance which doesn’t make any sense. It is a money grab as I see it.”

“Where’s the common sense?”

“What I would like to see is that the IRS require their employees continued education, user fees, fingerprinting and the competency testing.”

“Please, just let us do our jobs.”



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