

Registration of Return Preparers

I. It is a new day for the tax professional community.

Prepared remarks of IRS Commissioner Doug Shulman to New York State Bar Association Tax Section Annual Meeting in New York City, January, 2010

“I believe that at the end of the day, taxpayers and tax authorities pretty much want the same thing out of the tax system. They want certainty regarding a taxpayer’s tax obligations sooner rather than later. They want consistent treatment across taxpayers. They want an efficient use of government and taxpayer resources by focusing on the issues and taxpayers that pose the greatest risk. And that’s all about working smarter.

Working smarter also includes maximizing the use of our resources, while leveraging other players in the tax system to help us ensure compliance with the law. We recently unveiled a major initiative to oversee tax preparers who are an integral part of the tax system. With the complexity of the tax code, more and more Americans now turn to a preparer to help them file their taxes. We estimated that there are somewhere between 900,000 and 1.2 million paid tax return preparers. And making them an integral link to our service and compliance strategies will help us do our job.

We announced that we plan to require registration, minimum competency testing, and continuing education of paid tax return preparers. In addition, once we set up and administer a testing process, we will create a public database of preparers, so that taxpayers can find out if they are dealing with a qualified preparer. We are also shifting enforcement resources to focus on preparers. Beginning this filing season we are expanding our “knock and talk” and other programs to visit thousands of preparers to discuss their operations and ways to reduce preparer error rates.

The goals of the strategy are to improve service to taxpayers, increase compliance, and enhance the integrity of the overall tax system. I think this creates leverage for us, and is a smart use of our resources.”

II. Background

- A. Professionals who represent clients before IRS, including attorneys, CPAs and EAs are already subject to IRS oversight. However, under current law, a much larger group of return preparers are not.
- B. Taxpayer Advocate Nina Olson noted in her June 30, 2009, Report to Congress, apart from IRS’s authority to assess and collect penalties against return preparers, there is virtually no current federal oversight over “Unenrolled” preparers, who constitute the majority of tax return preparers today.

- C. In early January of 2010, IRS released a 50-page study on the U.S. return preparer industry which carries detailed recommendations for new standards.
- D. Based on the results of its Return Preparer Review, IRS says it intends to subject return preparers who are not attorneys, CPAs or EAs to the following new requirements and standards.

Tax Professional Alert: These new requirements will require proposed and final regulations in order to be implemented, and will not be in effect until the 2010 filing season.

III. Proposed Return Preparer Competency and Conduct Standards

- A. IRS has provided further guidance in the form of frequently asked questions, to supplement the report, news release, fact sheets, and other information that it issued in early January 2010 on the future regulation of tax return preparers with new registration, testing and continuing education requirements.
- B. Among other issues, the Frequently Asked Questions examine who will be covered by and who will be exempt from the new requirements.
- C. These FAQs can be viewed on the IRS web site at <http://www.irs.gov/taxpros/article/0,,id-210909,00.html>.

- Registration: Preparers who are required to sign a federal tax return as a paid return preparer will have to register with IRS and pay a user fee.
- Also, IRS plans to make the use of Preparer Tax Identification Number (PTIN) mandatory instead of optional.
- Registration renewals and user fee payments would be required every three years.
- IRS will develop and make available to the public a searchable database of tax return preparers that have registered and passed the competency examination.
- Competency Testing: Paid tax return preparers will have to take a competency test.
- Initially, there would be two levels of competency examination for:
 1. Wage and non-business Form 1040 series and
 2. Wage and Small Business Form 1040 series.A third test on business tax preparation will be added after the initial implementation phase is completed, and IRS plans to monitor the testing process during the implementation phase is complete, and IRS plans to monitor the testing process during the implementation period to study whether additional tests are necessary and feasible.
- A transition rule would give existing preparers approximately three years to meet the competency testing requirement.

- During the initial three-year implementation period, preparers will be allowed to take exams as often as they are offered until they pass the exam.

Tax Professional Alert: Tax return preparers will not be grandfathered from the testing requirement based on return preparation experience.

Enrolled Actuaries and Enrolled Retirement Plan Agents will have to pass one of the competency tests if they intend to prepare Form 1040 series returns.

In the future, IRS will study tax return accuracy of attorneys and CPAs to ensure that their exemption from the new testing requirements is warranted.

- Continuing Education: Paid preparers would be required to complete 15 hours of continuing education annually; three hours of federal tax law updates, two hours of tax ethics, and 10 hours of other federal tax law topics.
- IRS intends to have paid preparers self-certify completion of continuing education requirements during registration renewal, and will conduct periodic checks to ensure compliance with the requirements.

Tax Professional Alert: If data is collected in the future that identifies a need for educational requirements for attorneys, CPAs and EAs, IRS will consider expanding the continuing education requirement to them.

- Ethical Standards: All signing and non-signing tax return preparers would be subject to Treasury Department Circular 230, which will make them subject to discipline for unethical and unprofessional conduct.
- The authority granted to those individuals who either do not have professional licenses or who are not EAs, Enrolled Actuaries or Enrolled Retirement Plan Agents will be limited to preparing tax returns and representing their clients as currently permitted during the examination of any return prepared by that tax return preparer.

IV. What is the IRS Timeline for Registering and Testing Return Preparers?

- A. IRS notes that the current target date for an on-line registration system is September 1, 2010 and that the current target date for requiring all paid signing preparers to be registered and to use a PTIN is January 1, 2011.
- B. Testing will not be implemented until after registration and mandatory PTIN usage are in place.

Tax Professional “Testing” Date:

April 1, 2011 – David Williams, Director of Electronic Tax Administration and Refundable Credits is the lead IRS executive in charge of implementing the Return Preparer Program. April 1, 2011 is the anticipated date of “competency testing.”

Tax Professional Alert: *Individuals who are active attorneys, CPAs, or Enrolled Agents will not be required to register unless they prepare returns for compensation and sign one or more federal tax returns.*

All paid signing tax return preparers will be required to register even if the individual only prepares payroll or other non-Form 1040 series returns.

Since only attorneys, CPAs, or Enrolled Agents who are active and in good standing with their respective licensing agencies will be exempt from competency testing; a CPA who keeps his license current but is considered inactive will be subject to testing.

V. What about attorneys and CPA’s and those with state licenses?

A. All attorneys and certified public accountants will be exempt from IRS’s continuing education requirements.

1. The lack of continuing education requirements for attorneys or CPAs in a specific state will not impact the exception.
2. The IRS believes that all tax return preparers have an obligation to stay current on the tax laws and continuing education serves to help individuals remain current and to expand their knowledge within their field of expertise.
3. IRS will consider requiring continuing professional education from additional individuals if data is collected in the future that identifies such a need.

B. In many states, a registered or licensed public accountant, LPA, has the same rights and privileges as a CPA.

1. An LPA in those states is eligible to practice before IRS by virtue of their public accountant’s license and these individuals will not be required to pass IRS’s return preparer examination or satisfy the CPE requirements for tax return preparers.
2. IRS provides the following, non-exclusive list of states where a LPA has the same rights and privileges as a CPA:

- Alabama
- Alaska
- Arkansas
- California
- Colorado
- Connecticut
- Hawaii
- Idaho

- Maine
- Montana
- New Hampshire
- New Jersey
- New York
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- Rhode Island
- South Dakota
- Tennessee
- Vermont
- West Virginia

Tax Professional Alert: The IRS has concluded that LPAs in Delaware, Illinois, Iowa, Kansas, Michigan, Oregon, and South Carolina do not have the same rights and privileges as a CPA and, so they will be required to pass the IRS's return preparer examination and satisfy the CPE requirements to prepare any federal tax return for compensation, unless the LPA is an attorney or Enrolled Agent. LPAs in other states will need to review the state laws in which they are licensed to determine if they have the same rights and privileges as a CPA.

Minnesota: Although the IRS has reviewed the laws of 29 states to determine if the registered or licensed public accountants in those states have the same rights and privileges as a CPA, it has not yet done so in Minnesota.

Accordingly, registered public accountants in Minnesota, who are governed by the Minnesota Board of Accountancy, must register with the Board, pay a fee, and have continuing education requirements and ethics requirements, will have to review their state laws to determine whether they have the same rights and privileges as a CPA until the Office of Professional Responsibility has an opportunity to formally consider whether Minnesota's registered public accountants are qualified to practice as CPAs.

California and Oregon: Preparers who are registered by the states of California or Oregon, California Tax Return Preparers and Oregon Licensed Tax Preparers/Consultants, will not be exempt from testing and continuing education requirements.