



HIGHLIGHTS:

- ✓ *Six-Month IRS Study*
- ✓ *Registration For Paid Signing Preparers*
- ✓ *Competency Testing For Unenrolled Preparers*
- ✓ *Continuing Education For Unenrolled Preparers*
- ✓ *Expanded Circular 230*
- ✓ *Enforcement In 2010 Filing Season*

IRS Unveils Comprehensive Preparer Reform Blueprint

After six months of internal study, review of hundreds of comments and a series of public meetings, the IRS has announced a sweeping reform of return preparer oversight. All paid signing preparers, regardless of credentials or licenses, will be required to register with the IRS. Unenrolled preparers will be required to complete competency testing and mandatory continuing education. On January 4, the IRS released a blueprint of its new preparer initiative and indicated that regulations necessary to implement the changes would be released in 2010.

Impact *The IRS's reforms will be costly to implement. The IRS will charge a fee for registration and renewal. Preparers will also be required to pay for competency testing. However, the IRS has not yet indicated how much these fees will be or how much revenue they are expected to generate. IRS officials have said that the reforms will not increase the cost of return preparation for taxpayers but, so far, have not explained how those costs will be absorbed.*

Impact *At this time, many of the details of the initiative are still to be revealed. One of the most important unanswered questions is the timeline for registration, competency testing and continuing education. On January 13, the IRS issued a Request for Proposal (RFP) to procure vendor support in establishing a system for online registration of paid tax return preparers. The RFP identifies a tentative introduction date for an online system of registration of September 1, 2010.*

Comment The IRS's reform initiative is grounded in its current regulatory authority. However, Congress could expand it by statute. Several prominent lawmakers have expressed their disappointment that the IRS is not requiring all preparers, signing and nonsigning, to register and have indicated they will introduce legislation to require universal registration.

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The IRS emphasized that, despite the urgency of the problem, none of the requirements would be in effect for the current 2010 filing season. However, the IRS does plan to immediately step up its oversight of preparers.

IRS TAX RETURN PREPARER REVIEW

In June 2009, the IRS launched its Tax Return Preparer Review. The IRS held three public meetings in 2009. The first meeting brought together representatives from consumer advocacy and tax professional organizations. The second public meeting included a panel of federal and state government agencies.

Representatives from the return preparation software industry and independent tax return preparers attended the third public meeting.

The IRS also issued Notice 2009-60 inviting comments on how the tax return preparer community can assist in increasing taxpayer compliance and how to ensure that tax return preparers meet both uniform and high ethical standards of conduct. The IRS reported that it received more than 500 comments.

Comment As the Tax Code has grown more complex, the number of individuals turning to professional assistance has increased. The IRS reported that approximately 87 million federal individual income tax returns were prepared by paid tax return preparers in 2008. The IRS estimates the number of preparers is between 900,000 and 1.2 million.

Comment More than one in five taxpayers say they will be turning to online or packaged tax software to prepare their taxes, according to an independent survey of more than 1,000 respondents conducted for CompleteTax®, developed by CCH, a Wolters Kluwer business. According to the survey, the majority of taxpayers (60 percent) plan to use an accountant or professional tax preparer.

Return preparer oversight currently varies by jurisdiction, the preparer's professional license, and whether he or she has been enrolled to practice before the IRS. Traditionally, the federal government's role has been limited. Attorneys and CPAs are licensed by their states. Attorneys and CPAs are subject to state continuing education, ethics, and professional standards and may be disciplined for wrongdoing. Attorneys, CPAs and enrolled agents are also subject to Circular 230. The IRS may reprimand, censure, suspend, or disbar practitioners who violate Circular 230. Four states

(California, Maryland, New York, and Oregon) have enacted state regulatory programs for tax preparers.

Comment California is often mentioned as a model for oversight on the national level. Preparers who are registered with the California Tax Education Council (CTEC) must meet a required initial 60 hours of education from an approved provider, pass a final examination, and satisfy 20 hours of continuing education every year to remain in compliance. California also requires registered tax preparers to carry a \$5,000 preparer surety bond.

REGISTRATION

Under current rules, a signing preparer must provide either a Social Security number (SSN) or IRS-issued preparer tax identification number (PTIN) when signing a client's return. Paid preparers who fail to sign returns, include their identifying number, and maintain required records may be liable for penalties. Under the initiative's proposed rules, all individuals who prepare returns for compensation and are required to sign those returns will need to register with the IRS and obtain a PTIN.

According to the RFP issued on January 13, the current target date for an online registration system is September

1, 2010. The IRS indicated that final determination of an online registration system availability date will not be possible until multiple factors are considered, including evaluation of the proposals submitted by vendors. The IRS further indicated that the vendor will develop and maintain the registration application system.

Comment The IRS did not define "signing preparer" and "nonsigning preparer" in its blueprint. Under Reg. §301.7701-15, a tax return preparer is any person who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any return of tax or any claim for refund of tax under the Tax Code. A signing tax return preparer is the individual tax return preparer who has the primary responsibility for the overall substantive accuracy of the preparation of such return or claim for refund. Generally, a nonsigning tax return preparer is any tax return preparer who is not a signing tax return preparer but who prepares all or a substantial portion of a return or claim for refund.

Preparers will be required to pay an initial registration fee and a renewal fee. The IRS intends to require preparers to renew their registrations every three years. Registration and PTIN require-

State Registration of Return Preparers

State	Attorneys	CPAs	Enrolled Agents
California	Exempt	Exempt	Exempt
Maryland	Exempt	Exempt	Exempt
New York	Exempt	Exempt	Not exempt
Oregon	Exempt	Exempt	Not exempt*

* EAs must hold a consultant license if they are preparing, assisting or advising in the preparation of individual income tax returns. No license is required if the EA is merely representing the taxpayer before the IRS.

ments would not apply to volunteer or other uncompensated preparers.

Impact *Preparers should expect a limited compliance review when they renew their registration. The IRS explained that the compliance review will ensure that the preparer has filed his or her personal and business federal tax returns and that the tax due on those returns has been paid or the preparer has reached an acceptable agreement with the IRS to satisfy any outstanding liabilities. The IRS also intends to perform suitability checks when unenrolled preparers make their initial application to take the competency examination. Suitability checks, the IRS explained, may include criminal background and tax compliance checks. .*

The IRS did not limit registration to paid signing preparers who sign a threshold number of returns in a calendar year or who receive fees over a threshold amount. Rather, all paid signing preparers, regardless of the number of returns they prepare and the amount of compensation they receive, must register with the IRS.

Comment During the public meetings and in written comments, many practitioners recommended an initial registration fee in the neighborhood of \$100 to \$200 and renewal fees in the same range. Additionally, practitioners suggested that the IRS use a staggering method to implement registration. For example, the IRS could implement registration and conduct renewals of registration based on the last digit of the preparer's Social Security number.

Initially, only signing return preparers will be required to register. However, the IRS may extend the registration requirement to nonsigning tax

return preparers. Preparers currently registered under a state registration system will not be exempt from registering with the IRS.

Comment The IRS will need to develop a penalty structure for preparers who fail to register. The IRS could impose, among other sanctions, a monetary penalty.

“The IRS released a blueprint of its new preparer initiative and indicated that regulations necessary to implement the changes would be released in 2010.”

COMPETENCY TESTING

Under the initiative, unenrolled preparers will be required to successfully complete competency testing. Attorneys, CPAs and enrolled agents will be exempt from competency testing -- at least for the time being. However, enrolled actuaries and enrolled retirement plan agents will be required to pass an IRS competency test if they intend to prepare Form 1040 series returns.

Impact *A preparer's work experience will not be taken into account as the IRS will not “grandfather” any preparer from testing based on experience. Additionally, the IRS intends to assess the quality of return preparation by attorneys, CPAs and enrolled agents to determine if it should mandate competency testing for these practitioners in the future.*

Impact *The IRS intends to develop a searchable database of preparers who have*

registered and passed the competency examination. This proposal has caused some practitioners to question if registration and successful completion of the examination will result in preparers labeling themselves “IRS-certified.”

Comment The IRS certifies approximately 60,000 Volunteer Income Tax Assistance (VITA) volunteers annually. Some organizations that participate in VITA promote their preparers as “IRS certified.”

The IRS announced that there will be two levels of competency examinations for: (1) Wage and nonbusiness Form 1040 series and (2) Wage and small business Form 1040 series. The IRS intends to add a third test on business tax preparation after the initial implementation phase is completed. A transition rule would give existing preparers approximately three years to meet the competency testing requirement. Preparers will need to pass the examination(s) they choose to take only once.

Comment The IRS reported that it will monitor the testing process during the implementation period to study whether additional tests are necessary and feasible.

Comment Among the topics to be tested on the wage and nonbusiness Form 1040 series examination are Schedules A, B, C-EZ, and D. Topics on the wage and small business income Form 1040 series examination include Forms 1065 K-1, 1120S K-1, and Form 1040 Schedules C, D and F. It is expected that the IRS will outsource competency testing as it has done for enrolled agents.

During the initial implementation period, an unenrolled preparer may at-

tempt to pass the examination as often as the examination is offered and the testing fee is paid. An unenrolled preparer will be permitted to register with the IRS and receive a PTIN during the initial implementation period even if he or she has not passed the examination.

Comment

It does not appear that the IRS will allow individuals to substitute testing offered by organizations such as the Accreditation Council for Accountancy and Taxation (ACAT) for the agency's competency examination.

CONTINUING EDUCATION

Unenrolled preparers who prepare returns for compensation will be required to complete 15 hours of continuing education annually. The 15 hours must include three hours of federal tax law updates, two hours of tax ethics, and 10 hours of other federal tax law topics. Preparers will self-certify completion of continuing education requirements during registration renewal.

Impact

The proposed continuing education requirements will not – at this time – apply to attorneys, CPAs and enrolled agents who are in good standing with their licensing agencies. The IRS will consider mandatory continuing education for these practitioners if it identifies a need for this requirement in the future.

Comment

Some jurisdictions do not require continuing education for attorneys. The IRS noted that these practitioners may not receive annual updates of federal tax developments. The IRS indicated it will encourage professional associations to include annual federal tax law topics and updates in their continuing education curricula for practitioners who are li-

censed by them and who prepare federal tax returns.

CIRCULAR 230

Circular 230 provides the practice standards that every tax professional must follow if he or she wants to enjoy the privilege of representing clients before the IRS. Any attorney, CPA, or enrolled agent, not currently under suspension or disbarment, may practice before the IRS. The rules for enrolled actuaries and enrolled retirement plan agents are similar but practice is more limited in scope. The IRS also permits some individuals to engage in "limited practice."

Under the current rules, an unenrolled preparer's ability to practice before the IRS is limited. Generally, it is limited to the examination function, and only with respect to a return that the unenrolled preparer had prepared. An unenrolled preparer cannot practice before Appeals officers, revenue officers, and IRS Counsel. An unenrolled preparer cannot execute claims for refunds, receive refund checks, execute consents to extend the statutory period for assessment or collection, execute closing agreements, or execute waivers of restriction on assessment or collection of a deficiency in tax.

Comment

For Circular 230 purposes, an attorney means any person who is a member in good standing of the bar of the highest court of any state, territory, or possession of the U.S., including the District of Columbia; a CPA means any person who is duly qualified to practice as a certified public accountant in any state, territory, or possession of the U.S., including the District of Columbia; and an enrolled agent means any person who has earned the privilege of practicing or representing taxpayers before the IRS.

Under the reforms, the IRS will treat return preparation for compensation as

practicing before the agency. In fact, all signing and nonsigning tax return preparers will be governed by Circular 230, making them subject to discipline for unethical and unprofessional conduct.

Under the reforms, the ability of attorneys, CPAs, enrolled agents, enrolled actuaries, and enrolled retirement plan agents to practice before the IRS under Circular 230 will not change. The remaining return preparers will be authorized to prepare returns and to represent clients before the IRS during an examination of any return that the preparer prepared for the client as currently permitted under the limited practice provisions of Circular 230.

Impact

Bringing all preparers under Circular 230 will significantly expand the responsibilities of the IRS Office of Professional Responsibility (OPR), which enforces Circular 230. IRS Commissioner Shulman indicated that the IRS will beef-up staffing in OPR to handle the expected growth in workload.

Impact

Litigation beyond the IRS, in the Tax Court and other federal courts, will remain limited to attorneys (and nonattorneys admitted to practice before the Tax Court). All nonattorneys must sit for a written examination administered by the Tax Court to assure that the applicant possesses the requisite qualifications to provide competent representation before the Tax Court.

Comment

In addition to Circular 230, Code Sec. 7216 prohibits preparers of returns from knowingly or recklessly disclosing or using tax return information. For purposes of Code Sec. 7216, preparers are persons that participate in the preparation of tax returns for taxpayers, including but not limited to return preparers that are in business or hold themselves out as

preparers, electronic return originators, electronic return transmitters, and software developers.

ENFORCEMENT

Generally, all paid return preparers are subject to civil penalties for actions ranging from knowingly preparing a return that understates the taxpayer's liability to failing to sign or provide an identification number on a return they prepare. Tax return preparers who demonstrate a pattern of misconduct may be enjoined from preparing further returns. Additionally, the IRS may pursue criminal penalties against a tax return preparer for the most severe misconduct.

The IRS intends to take additional steps during the 2010 filing season to boost its enforcement of return preparers. Preparers can expect directed notices

and targeted site visits. Approximately 10,000 paid return preparers nationwide will receive letters from the IRS. The preparers receiving the letters are among those with large volumes of specific tax returns where the IRS typically sees frequent errors. The letters are intended to remind preparers to be vigilant in areas where the errors are frequently found. Some of the recipients can expect in-person visits from IRS revenue agents which the agency has promised are not intended to be compliance audits. Along with enforcement, the IRS will launch a public awareness campaign to educate taxpayers about the new standards and requirements for tax return preparers.

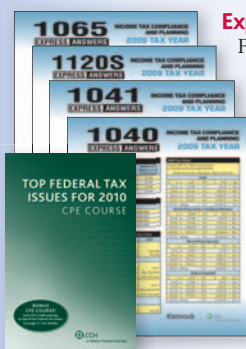
Impact *The IRS also plans to make undercover visits to preparers. IRS revenue agents will pose as taxpayers seeking return preparation.*

TAX PREPARATION SOFTWARE

The IRS intends to assemble a task force to study the role of software in tax preparation. The task force will identify possible risks to tax administration, particularly in the areas of tax return accuracy, the security and privacy of taxpayer information and the reliability of electronic filing. The task force will also explore the possibility of establishing industry standards.

Impact *The tax preparation software industry is largely self-regulated. If software is inaccurate or problematic, customers will not buy it. Software, the IRS noted, is almost universal and its role in the tax preparation industry had not been thoroughly studied.*

Stay current with the latest IRS proposals for new registration, testing and CPE requirements for tax return preparers



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