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IRS Proposes Tax Return Preparer Registration

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NEW YORK—The IRS's New Year's resolution: sweeping new regulations for return preparers. The agency has announced a plan to move forward with new regulations for non-CPA tax practitioners that would require that they register, take tests and earn continuing education.

"Higher standards for the tax preparer community will significantly enhance protections and service for taxpayers, increase confidence in the tax system and result in greater compliance with tax laws over the long term," the IRS said in a press release.

Taxation of Individuals Committee member **Lawrence Stack** supports the efforts, but said he thinks it's regrettable that "fear is one of the best, and in many cases, the only deterrent" to fraud and negligence.

Currently, the level of oversight over tax return preparers depends on whether the preparer holds a professional license, has been enrolled to practice before the IRS, files returns electronically and the jurisdiction in which the returns are prepared.

Only CPAs, attorneys and enrolled agents can represent taxpayers before the IRS in all matters, including audits, collection and appeals. But currently, anyone may prepare a federal tax return for anyone else and charge a fee, and many do not have to meet any government or professionally mandated competency requirements before preparing a federal tax return for a fee.

IRS Commissioner Douglas Shulman called the proposed regulations a "monumental shift in the way the IRS will oversee tax preparers." Monumental or not, the IRS stressed that it will develop "transition rules" to ensure that taxpayer services are not "significantly" interrupted during the initial phases.

It was Shulman who launched the Return Preparer Review, a study that culminated in the release of this proposal, in June.

Mandatory Registration

A new triennial registration requirement for tax preparers would provide them with a preparer tax identification number (PTIN) for a fee. As proposed, the registration requirement would only apply to preparers signing a return; the IRS said it will study the impact of expanding the registration requirement to nonsigning preparers.

Will CPAs have to register and obtain this preparer identification number? New York IRS spokesperson Dianne Besunder said that as stated, the regulations would only require CPAs who prepare taxes and do not already have a PTIN to register to obtain one.

"Everybody is required to have one, but it doesn't say you have to get a new one," Besunder said. "I'm sure we will have additional information on this as time goes on, but that's the way it's laid out right now."

Besunder said she doesn't expect that the IRS will make CPAs already in possession of PTINs reregister or pay a fee to keep them.

After reading the proposal, Taxation of Individuals Committee Vice Chair **Jonathan M. Horn** said it's also not clear what the IRS plans to do if a nonregistered individual signs a tax return: "Will the IRS notify the taxpayer that the person they paid money to prepare their return isn't authorized or qualified to do so?"

In her annual report to Congress last month, National Taxpayer Advocate Nina E. Olson applauded the IRS for moving forward with plans to regulate tax preparers, something she said she has recommended since 2002. However, she said she disagrees with the exemption for those not signing returns.

"I believe that a blanket exclusion of

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and will develop a public awareness campaign to educate taxpayers and tax preparers about all these new standards.

Horn noted another inconsistency, in a provision that would extend the statute of limitations for assessing penalties under the tax return preparer penalty provisions under Internal Revenue Code sections 6694(a), 6695 and 6695(a). Taxpayers and preparers share a three-year statute of limitations on this, currently. But if the statute of limitations is extended for preparers, Horn said, it could create a situation where only a preparer is penalized when the taxpayer is at fault for providing incorrect information.

NYSSCPA Members Respond

According to the IRS study, the public comment process revealed "overwhelming" support for efforts to increase oversight of paid tax return preparers, "particularly for those who are not attorneys, certified public accountants or other individuals authorized to practice before the IRS."

This sentiment was echoed by NYSSCPA members who work in the individual tax arena, many of whom said this type of regulation should already be in place.

"It's a long time coming that the IRS is cracking down on the storefront accountants and tax preparers who do substandard work," said **Vincent J. Cosenza,** a member of the Society's Taxation of Individuals Committee. "The IRS will finally have control of who the bad apples are and [they] will not get away with their incompetence like they used to. It's important that every taxpayer who goes to a preparer for his return receives a properly completed return by a compliant and competent tax preparer. This is what the taxpayer is paying for."

Also calling the move "long overdue" was **Joseph V. Falanga,** a member of the Taxation of Individuals and Estate Planning committees. Currently, he said, "taxpayers have no protection from the limitless tax preparers around with no educational credentials."

This should never have been the case, said Taxation of Individuals Committee member **Alexander Ishmael.** "Why should anyone practice tax compliance without certification?"

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> *—Jeffrey R. Hoops, past NYSSCPA president, member of the Professional Ethics Committee*

Jeffrey R. Hoops, a past Society president and a member of the Professional Ethics Committee, said "there's a world of difference" between the requirements of the CPA credential and those that would be required of tax preparers under the IRS's proposal, and warned that there's a risk that this could confuse the public.

"I think it's a potential problem," he said. "I think the IRS needs to communicate exactly what they are trying to accomplish, and it's also up to the profession to differentiate between the registration and the requirements that go along with registration, and the more stringent requirements a CPA needs to adhere to."

Higher standards for non-CPA preparers could dilute the CPA brand, but **Marc J. Strohl,** a member of the NYSSCPA's Taxation of Individuals and International Taxation committees, said it's more likely that the new rules will reduce competition from storefront tax preparers and tax preparation chains like Jackson Hewitt.

"[They] will raise their internal costs to process tax returns, they will raise their prices, and as the public sees that they charge almost what a CPA charges, they will decide to only have CPAs do their income taxes," he said. "The magic of the H&R Block $99 tax return has vanished."

Strohl is firmly in support of the measure.

"There is not a CPA alive who will not think that this idea is stellar," he said, "as untrustworthy, unethical tax preparers have for years made us all look bad and cut into our revenue streams."

Alan E. Weiner, a past Society president and current member of two committees, agreed with Strohl. "This proposal is not about CPAs versus unregistered tax preparers," he said. "My opinion is that requiring paid tax preparers to adhere to established standards is beneficial to the integrity of the tax system. It will improve standards, weed out unqualified preparers and enable the IRS to take away a license from, or suspend, those paid preparers who act inappropriately. I would go further and extend the proposed regulations to almost anyone who prepares a tax return."

Letter Campaign

The IRS also announced that it is immediately stepping up efforts to ensure that paid tax preparers are serving clients appropriately. To this end, the agency is sending out more than 10,000 letters to preparers with information about some of the most common errors the IRS is seeing on filed returns.

Specifically, the letters will urge return preparers to review "pertinent" books and records of Schedule C filers, determine the correct amount of deductions for Schedule A filers, double-check the existence of qualified dependants and entitlement to claim the Earned Income Tax Credit, and ask homebuyers questions to ensure they qualify for the First-Time Homebuyer Credit.

They will also warn of consequences for filing inaccurate returns, which include monetary penalties, suspension or expulsion from the IRS e-file program, civil injunctions barring the preparer from signing tax returns and even referral to criminal investigators.

During the filing season, some recipients of these letters will get a visit from IRS agents, who will either identify themselves and discuss the issues described in the letter or, in a separate enforcement effort, pose as taxpayers to see if the advice given is appropriate, and return preparation accurate.

The IRS proposal comes on the heels of a tax return preparer registration law adopted in New York state, which requires paid tax return preparers to register with the state tax department and pay a $100 fee. CPAs, attorneys and employees of CPA and law firms under the direct supervision of a CPA or attorney are exempt from registering. However, unlike the IRS's proposal, enrolled agents are not exempt from the state law.

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