



NSALERT

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IN THIS SPECIAL TAX PREPARER REGULATION ISSUE:

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IRS Commissioner Holds Forum on Regulation of Tax Return Preparers

The IRS held the first in a series of forums on tax preparer review on Thursday, July 30. As NSAlert readers are aware, the purpose of the forums is to gather input to determine whether some form of registration, licensure, and/or testing for paid tax preparers is necessary to improve their compliance with tax laws. IRS plans to produce a set of recommendations by the end of the year on how to ensure uniform, high ethical standards of conduct for tax preparers.

NSA President Jim Nolen testified in favor of our frequently expressed position on tax preparer registration/legislation as follows:

- We support registration of tax preparers.
- We support a qualifying examination.
- We support allowing third party examinations deemed to be equivalent by Treasury or IRS to be substituted for any entrance exam.
- We believe the examinations offered by ACAT are equivalent (or better) than any examination contemplated by the IRS.
- We support a requirement for continuing education.
- We support an orderly (phased) implementation of registration and/or testing over a two or three year period so as not to disrupt the filing process, including extensions.
- We support the establishment of an "administrative entity" to oversee tax preparers and ensure that any fees paid by preparers are used for regulation and to educate consumers. (Why an administrative entity? See the "When Reality Strikes..." article below)

We should point out that NSA's position is in the mainstream: we testified on a panel with the AICPA, NAEA, NATP and the American Bar Association. Perhaps as a result of the reporting of widespread abuses by unscrupulous preparers – which make us all look bad – no panelist objected to registration or CPE requirements. There was also no disagreement that those who have already passed a test of competence, including those offered by the Accreditation Council for Accountancy and Taxation, should not have to take any other test that may be required as a result of this IRS review. Included in this "waived" group should be any individual who holds a

license from a state accountancy board or who has been granted Circular 230 privileges by the IRS according to Nolen.

IRS Commissioner Shulman remarked that allowing third party tests like those offered by ACAT may be “the first avenue to the grandfathering of experienced tax preparers that solves two problems.”

YOUR Chance To Comment On Preparer Regulation

As part of its review of tax preparer regulation, the IRS has issued Notice 2009-60 requesting comments on 1) how the tax return preparer community can assist in increasing taxpayer compliance and 2) how to ensure that tax return preparers meet both uniform and high ethical standards of conduct. **This is your opportunity to support your profession and your professional society.** NSA strongly urges you to take this opportunity and send your email comments to the IRS at the following email address: Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2009-60" in the subject line of any email message. Written comments should be sent to: CCPA:LPD:PR (Notice 2009-60), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. A copy of Notice 2009-60 may be found at the following weblink: <http://www.irs.gov/pub/irs-utl/n-09-60.pdf>

This may be the only chance you have to let the IRS know what you think.

We have set out below the nine questions on which the IRS is specifically seeking comment. Immediately below each question is NSA’s response, which we ask you to consider as you develop your comments.

- What types of individuals, entities, and professionals currently work as tax return preparers? How are their tax return preparation services currently monitored or regulated by professional organizations or the government? How could this monitoring and regulation be improved?
NSA’s view: Many different types of individuals or entities serve as paid preparers; however any registration, testing or ethics requirements should apply to all. Although the professional societies like NSA monitor credentials and ethics, enforcement or the monitoring of tax returns for compliance with the tax code, is a governmental function and should only be done by the IRS.
- How do difference in regulation and oversight affect how the various groups of tax return preparers interact with the Service and taxpayers?
NSA’s view: Although there may be a difference in regulation with respect to paid preparers who are currently subject to Circular 230 and those who are not, the standards for competent and professional tax preparation services should not. All paid tax preparers should be subject to the same minimum CPE and ethics requirements unless they are subject to even more rigorous requirements as a consequence, for example, of maintaining their license as a CPA or lawyer.
- Is there a minimum level of education and training necessary to provide tax return preparation services? If so, who should be responsible for ensuring that a tax return preparer meets this minimum level and how should that be done?

NSA's view: All preparers should take or have taken an examination demonstrating a minimum level of competency. For some, that has already occurred through various means already available, whether by means of the EA examination or by taking and passing other, equally valid tests of knowledge in taxation. For others it needs to be part of the registration or licensing process ahead of us.

The minimum testing level should be basic tax knowledge that any paid preparer should know – standard 1040 income and deduction items and specifically including knowledge of the Earned Income Tax Credit, which is an area where there is much abuse. The IRS should develop a testing blueprint, which could be a subset of the blueprint already available for the EA exam, and any test should be considered valid if it both tests on the subject matter in the blueprint and meets minimum testing standards specified by the IRS. Any such test should be subject to audit by the IRS. Taking and passing examinations offered by the Accreditation Council for Accountancy and Taxation should be specifically recognized as meeting the waiver requirement.

All preparers should be required to have annual CPE, which should be no less than that currently required of Enrolled Agents – 24 hours per year including 2 hours of ethics.

- What, if any, service and outreach should be provided to tax return preparers and taxpayers? Who should provide (and bear the costs for) these needed services?
NSA's view: Any fees assessed on tax preparers as a result of a regulation/licensing effort should be used by the body collecting the fee not only for regulation but also for public awareness and outreach programs to educate the public on tax preparers and their licensing requirements and requirements to sign all tax returns they work on
- Should tax return preparers be subject to a code of ethics, and, if so, what specific behavior should that code promote or prohibit? How would that code of ethics interact with existing ethical standards that may already be applicable?
NSA's view: All paid tax preparers must be held to high ethical standards. The standards contained in Circular 230 are appropriate and right for all preparers for this purpose.
- What, if any, responsibility should the firms or businesses that employ tax return preparers have for the conduct of the individuals they employ?
NSA's view: The person responsible for the return must sign the return. They are the responsible party. Who the responsible party employs to assist them should not matter. If the individual signing the return is held responsible, they will either train or cease to employ the individual causing the return not to be accurate.
- What, if any, responsibility should tax return preparer professional organizations have for the education, training, and conduct of their members?
NSA's view: NSA is proactive in this area. The NSA Bylaws require that, within the first 5 years of membership, all active members who do not already possess a professional credential are required to obtain one. In addition, members subscribe

to a code of ethics and must take mandatory continuing education. Compliance with these membership requirements are subject to audit by NSA.

- If tax return preparation services should be regulated, what, if any, special regulatory provisions should be made for individuals who are already tax return preparers, licensed attorneys, certified public accountants, enrolled agents, or software providers?

NSA's view: All paid tax return preparers should be required to register. A PTIN or other uniform identification method should be sufficient for this purpose. Although NSA also supports the requirement for a qualifying examination, we believe a waiver of this requirement should be provided for those who have already demonstrated their professional competence either by earning credentials offered by a nationally recognized credentialing body such as the Accreditation Council for Accountancy and Taxation, by being licensed to practice accounting by a state Board of Accountancy, by being licensed to prepare income tax returns by an agency established under state law, or by being subject to the provisions of Circular 230 under current law.

- What, if any, additional legislative, regulatory, or administrative rules should the Service consider recommending as part of its proposals with respect to the tax return preparer community?

NSA's view: All paid tax preparers should be required to register, to take or have taken a qualifying examination and to take continuing professional education. It is very important that third party examinations deemed to be equivalent by Treasury or IRS to be substituted for any entrance exam developed by the government. We believe the examinations offered by ACAT are equivalent (or better) than any examination contemplated by the IRS.

When Reality Strikes: Is the IRS Equipped To Regulate Preparers?

Some may wonder why we have taken the position it may be best to establish an administrative entity similar to the PCAOB to assume responsibility for the regulation of tax preparers. We certainly mean no disrespect to the IRS Office of Professional Responsibility, but perhaps a recent report from Treasury's Inspector General can shed some light on the problems facing OPR in the regulation arena.

The Treasury report, released on July 20, found that the IRS does not know how many tax preparers there are, which tax returns they prepared, or which taxpayers they represent. Further, "the IRS currently is not capable of ensuring that paid preparers adhere to professional standards and follow the law," according to TIGTA's J. Russell George.

Consider this:

- IRS data on tax preparers is stored on 22 different systems and the systems are not integrated (one suspects this may make the matching of tax returns with tax preparers to assure compliance with tax rules a difficult prospect);
- Multiple identifying numbers were used by 67 percent of the tax preparers sampled.
- The names of the preparers in the sample were inconsistent in various of the 22 IRS computer systems 45 percent of the time.

- There were inconsistencies in 24 percent of the preparers' street addresses listed in the various systems, while telephone numbers varied 40 percent of the time.
- The IRS computers find it difficult, if not impossible to track preparers because preparers sometimes use multiple numbers—his or her Social Security number to file some tax returns, a PTIN to file others, or fail to use an identifying number at all; and many sign tax returns using variations of their names—for example, John Doe, John S. Doe, and J. Doe.
- In 10 instances, IRS records showed the preparers were attorneys, although TIGTA's research from state Web sites showed only two preparers were members of state bar associations.
- Seven preparers were listed in IRS records as both attorneys and certified public accountants, while TIGTA only verified that one held both designations.

You can't make this stuff up. Fortunately, you don't have to – the Treasury report is available at the following weblink: <http://www.treas.gov/tigta/auditreports/2009reports/200940098fr.pdf>.