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Return Preparer Review Leads to Recommendations For New Requirements of Paid Tax Return Preparers

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What is the Return Preparer Review?

In June 2009, IRS Commissioner Doug Shulman called for a comprehensive review of the paid tax return preparer industry, drawing on all relevant data and input from interested parties. The goal was to produce a comprehensive set of recommendations to better leverage the tax return preparer community, fostering higher compliance with the law by taxpayers and better service to taxpayers through higher standards of conduct by paid return preparers.

The Return Preparer Review is the result of an open, transparent dialogue with all interested parties, including consumer advocates, tax professional groups, federal and state organizations, IRS advisory groups, software vendors, and all types of return preparers, among others. The review incorporates the input from three public meetings and more than 500 public comments.

Based on the results of the Return Preparer Review, the IRS recommends a number of steps that it plans to implement for future filing seasons. These steps will not be in effect for the current 2010 filing season.

What new regulatory requirements will result from the Return Preparer Review?

Registration: Paid tax return preparers currently have no registration requirement with the IRS, but they are required to sign the returns they prepare and provide either their Social Security Number or a Preparer Tax Identification Number (PTIN). The PTIN has been an optional number a preparer can apply for if they prefer not to disclose their SSN.

The IRS intends to require individuals who are required to sign a federal tax return as paid return preparer to register with the IRS and pay a user fee. Also, the IRS plans to make the use of PTINs mandatory instead of optional.

The IRS intends to develop an online registration system for paid return preparers. The IRS plans to issue PTINs to preparers who do not currently have one as part of the online registration process. The IRS also intends for the registration process to apply to those paid preparers who already have a PTIN. These individuals will be reissued their current PTIN when they register.

Registration renewals and user fee payments would be required every three years. Registration and PTIN requirements would not apply to volunteer or other uncompensated preparers.

Competency Testing: Paid tax return preparers who are not attorneys, certified public accountants or enrolled agents will have to take a competency test. Currently any person may prepare a federal tax return for any other person for a fee. There are no minimum competency standards. The IRS plans to require that paid tax return preparers who are not attorneys, certified public accountants, or enrolled agents pass an IRS competency test. It should be noted that certified public accountants, attorneys and enrolled agents already take competency tests. However, in the future the IRS will study tax return accuracy of attorneys and certified public accountants to ensure that this exemption to testing requirements is warranted.

To avoid business interruption for existing preparers and clients, a transition rule would give existing preparers approximately three years to meet the competency testing requirement. There would be two levels of competency examinations for: (1) Wage and non-business Form 1040 series and (2) Wage and Small Business Form 1040 series. The IRS plans to monitor the testing process during the implementation period to study whether additional tests are necessary and feasible. The IRS plans to add a third test on business tax preparation after the initial implementation phase is completed.

The IRS plans to allow preparers who test during the initial three-year implementation period be permitted to sit for the examination as often as the examination is offered until they pass the examination provided the applicable fee is paid for each attempt.

The IRS does not intend to “grandfather” any tax return preparer from the testing requirement based on return preparation experience. Once testing is available, the IRS plans to require unregistered individuals who want to become preparers to pass the competency test prior to registration and issuance of a PTIN. The IRS recommends that enrolled actuaries and enrolled retirement plan agents be required to pass one of the IRS competency tests if they intend to prepare Form 1040 series returns.

Continuing Education: Paid preparers who are not attorneys, certified public accountants, enrolled agents, enrolled actuaries, or enrolled retirement plan agents would 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.

The IRS intends to have paid preparers self-certify completion of continuing education requirements during registration renewal. The IRS plans to conduct periodic checks to ensure compliance with the requirements.

While attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents are not subject to IRS continuing education requirements or self-certification during the registration renewal process, they generally must complete continuing education to retain their professional credentials. If data is collected in the future that identifies a need for educational requirements for these

individuals, the IRS will consider expanding the continuing education requirements to them.

Public Database: The IRS will develop a searchable database of tax return preparers that have registered and passed the competency examination. This will allow the public to see whether a preparer has taken appropriate tests and has registered with the IRS.

Compliance Checks: The IRS plans to require all signing paid tax return preparers be subject to verification of personal and business tax compliance every three years.

During the initial three-year implementation period, the IRS plans to conduct the tax compliance checks after registration and prior to the required renewal date. After the three-year phase-in period, the IRS intends to require tax compliance as a condition of registration and PTIN issuance.

For those individuals who are registered and have a PTIN, the IRS intends to refer potential tax compliance violations discovered at renewal to the IRS Office of Professional Responsibility for investigation and possible disciplinary sanctions.

Ethical Standards: The IRS recommends making all signing and non-signing tax return preparers subject to the provisions of 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 and who are not enrolled agents, 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.

How will the IRS monitor and regulate preparers in the near future stemming from new regulatory requirements being phased in?

Enforcement: The IRS will implement a comprehensive enforcement strategy that includes applying significant examination and collection resources to tax return preparer compliance. The IRS will also take steps during the 2010 filing season to increase education and enforcement of return preparers.

Evaluation: The IRS will study how to enhance the effectiveness of traditional enforcement tools and incorporate new non-traditional enforcement tools, such as directed notices and targeted site visits, into the enforcement activities directed at tax return preparers. The IRS will study the impact an enhanced return preparer enforcement strategy has on taxpayer compliance and consider further changes to the IRS enforcement strategy dependent on the outcomes realized. The IRS will increase the coordination among its operating divisions and increase the staffing of the Office of Professional Responsibility to allow for increased investigations of practitioners, including tax return preparer misconduct.

Why is the Return Preparer Review and resulting new regulatory requirements important? Use of paid preparers has grown steadily in recent decades. Today, a majority of U.S. taxpayers rely on a paid preparer to assist them in meeting their federal tax filing obligation. A federal tax return is one of the most important financial

documents that many individuals or families deal with in a given year. It is unclear exactly how many paid return preparers there are in the United States. The IRS estimates the number to be between 900,000 and 1.2 million.

All preparers are subject to some oversight but it varies greatly depending on their professional affiliations and which state they practice in. Many preparers do not have to pass any government or professionally mandated competency requirement before charging to prepare tax returns. Taxpayers need and deserve return preparers who are ethical, fully qualified and able to provide the best possible service. In addition, unethical or incompetent preparers are the most likely to make mistakes or file incorrect returns, adding to non-compliance. Public comments received by the Return Preparer Review overwhelmingly expressed support for increased oversight of paid preparers, particularly those who are not attorneys, certified public accountants or others authorized to practice before the IRS.

When will these recommendations be effective? None of the recommendations are effective for the immediate filing season. Proposed and final regulations are necessary for implementation of many of these recommendations, and further information will be available as these are developed. However, the IRS will immediately increase its education and enforcement presence in the return preparer community this filing season.