ENROLLED AGENT | AMERICA'S TAX EXPERT
NATIONAL ASSOCIATION OF ENROLLED AGENTS

May 23, 2014

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, Northwest
Washington, DC 20224

Re: Proposed Temporary, Voluntary Annual Filing Season Certification

Dear Commissioner Koskinen:

The National Association of Enrolled Agents (NAEA) appreciates the opportunity to comment on the Internal Revenue Service (IRS) proposal to create a new, temporary, voluntary return preparer program for the 2015 filing season. NAEA is the only organization solely representing the interests of 49,000 enrolled agents (EAs), America's tax experts. We are committed to increasing the professionalism of our industry, increasing the integrity of the nation's tax administration system, and protecting the representation rights of taxpayers.

According to documents provided by the Return Preparer Office, the proposed program "promote[s] return preparer education and allows preparers to differentiate themselves in the marketplace." Further, the proposed program "maintains the momentum for positive engagement of unregulated return preparers that has built up over the last five years." We understand the salient proposal requirements include a valid PTIN; 15 hours of continuing education (CE) annually (including a three-hour filing season refresher course and "knowledge based comprehension test"); and consent to Circular 230, subpart B. In return, IRS will provide limited practice rights; a certificate; listing in a public database of "qualified preparers.[1]"

NAEA has supported efforts—legislative, administrative, or both—to provide oversight to the widely unregulated tax preparer community. We are therefore predisposed to support efforts in this domain[2]. Nonetheless, we are troubled by the proposal, which we believe raises significant policy questions as well as significant administrative issues, and believe the agency should retract it.

Policy observations:

We respectfully offer these policy issues for your consideration:

[1] The database would also include legacy Circular 230 practitioners
[2] Our attached Statement for the Record for an April 2014 Senate Finance Committee hearing outlines our longstanding support for meaningful return preparer oversight.

- **Program integrity:** Our fundamental position on preparer oversight is that any program supported by the agency must make a significant contribution to the professionalism of the industry. A *sine qua non* of a meaningful program is a valid initial basic competency test combined with an annual CE requirement. If IRS adopts the proposal in question, we will still live in a world in which dog groomers and manicurists will be required to demonstrate competency and tax return preparers will not.

  When created and administered in a legitimate, controlled environment, the initial basic competency test—as the agency itself realized in the Registered Tax Return Preparer (RTRP) program—screens out those who cannot demonstrate mastery of even the most fundamental tax preparation issues. For those who clear the initial (and fairly low) hurdle, the CE requirement provides some assurance that the preparer is attempting to remain current with an evolving tax law.

  While the proposal retains an education requirement, it eliminates the initial basic competency test and replaces it with a 50-question "knowledge based comprehension test" to be created by individual CE providers. The "knowledge based comprehension test" appears to be an inconsistent, virtually uncontrolled, and invalid instrument, indistinguishable from what is commonly thought of as a quiz. The initial basic competency test and the 50-question "quiz" are not interchangeable and we are concerned taxpayers will mistakenly assume that participation in this voluntary program guarantees a high level of competence.

  The tax code is complex and enrolled agents could not provide their clients with competent tax advice without many hours of continuing education. While encouraging preparers to educate themselves is meritorious, the fact that CE is laudable does not change the fundamental math: education is a necessary, yet not sufficient condition for a serious oversight program.

  CE by itself, even in combination with a "knowledge based comprehension test," fails to provide a taxpayer with any assurance that the person preparing his or her return is even minimally competent to do so. And isn't that what we set out to do in the first place?

- **The "something is better than nothing" trap:** We see two significant problems with the presumption that something is better than nothing, an assertion we have heard from agency officials.

  First, the agency is far from starting with nothing. IRS had in place, pre-*Loving*, a voluntary return preparer program. It has had such a program, which acknowledges legacy Circular 230 practitioners, in place for years. The program is in place and ready to go right now.

Setting aside the fact that the suggestion "something is better than nothing" is faulty, the other problem is that the theoretical "something" IRS is proposing is in fact much worse than the actual "nothing" of the *status quo ante*.

In exchange for taking some CE (and, possibly, a 50-question "quiz" created by one of potentially hundreds of continuing education providers), the agency blesses the participant with the accoutrements of legitimacy: a title, a certificate, limited rights to practice, inclusion in an IRS-recognized preparer database, and so forth. Seems like a great deal for the would-be participant, who will be free to promote to the world that he or she has received IRS' "gold star." We see this as a terrible trade on the agency's part, because the agency will have given away its blessing in return for nothing of value.

- **Unsafe at any speed:** Even if we weren't opposed to the proposal under consideration, we would still be troubled by the speed with which IRS is moving. Given the legislative environment, taxpayers, tax preparers, and IRS may be forced to live for years with the consequences of a hastily conceived program. Among the questions that beg for answers:
    - What do program participants call themselves?
    - How does the agency justify awarding limited rights to practice to program volunteers?
    - How will IRS discipline the program participants?
    - Once Congress grants approval for a broad oversight program, how would IRS manage the current volunteers?

  The answer to the question of what these new volunteers call themselves is not trivial—in fact it is of great concern to a number of stakeholders who are concerned about marketplace confusion, particularly in an environment in which IRS has blessed a group of people for doing little more than taking a quiz and a few hours of CE.

  Legacy Circular 230 practitioners are subject to discipline up to and including revocation of their licenses to practice. We have too much invested in our licenses to practice to risk them by engaging in questionable behavior. Participants in the proposed program, on the other hand, have nothing to lose. In the wake of *Loving*, IRS cannot revoke PTINs and the cost of entry is next to nothing. What prevents them from returning their certificates once IRS begins to ask questions?

  Treasury in 2006 proposed eliminating limited rights to practice[3] because limited practice is inconsistent with the Circular 230 requirement that ALL individuals permitted to practice demonstrate their qualifications to do so. The

[3] NAEA has opposed limited practice for years. Please refer to pages 3 and 4 of our response to a 2006 Circular 230 Notice of Proposed Rulemaking for details.

proposed program lacks any competency testing and any continuing education requirements. We are troubled the agency views limited practice simply as a carrot, casually removing the right from one group and handing it to another when neither of these groups has earned the right in the first place. While we appreciate removing limited practice rights from those who have not demonstrated their qualifications, practice is not a carrot. The only policy change with respect to limited practice that demonstrates without a doubt the agency takes practice seriously would be to dispense with it altogether.

IRS proposes creating yet another return preparer program, but no one knows how it would integrate program participants into an RTRP (or RTRP-like) program once Congress grants the agency approval to do so. The agency would face pressure to recognize an entire class of volunteers who have not demonstrated baseline competency. Such a move would completely undermine any legitimacy the new mandatory program may offer.

Administrative concerns:

As we said in our opening, we have both policy and administration concerns. A number of our state affiliates, who are also CE providers, have offered detailed questions. As a result, we offer only high-level observations here:

1. CE providers who participate in the annual tax refresher course would be committing time and money to develop a course for a temporary program. To the best of NAEA's knowledge, however, IRS has not offered any projections on annual volume on which CE providers may base their decisions to create the course.

2. We note that although the annual tax refresher course appears on its face to be concerned with the most basic issues (*e.g.*, claiming the standard deduction, determination of filing status, and claiming someone as a dependent), it also includes a number of complex concepts, including the Net Investment Income Tax and the Shared Responsibility Payment (www.healthcare.gov provides no fewer than 14 hardship exemptions for the latter). Yet covering all items in the course outline is required. We are hard-pressed to see how a CE provider could cover such a wide range of material in three class hours and hard-pressed to see how a CE provider could price, market, and sell a longer course under the three-hour CE cap envisioned.

3. IRS has asked CE providers to create and administer a "knowledge-based comprehension test" at the end of the annual tax refresher course, yet it has provided no guidance on item writing, on weighting, on distribution and has failed to indicate what, if any, level of review it plans to offer.

4. Agency officials inform us they have no plans to charge participants. We believe OMB Circular A25[4] provides relevant guidance on user fees and note that assessing user fees is not discretionary. At the same time we understand the agency also has no plans to recalculate PTIN user fees, which were originally at least partially based on a CE management program no longer applicable to PTIN holders. Given that the agency shouldn't be using PTIN funds to support this program, we wonder how it proposes to fund a redundant voluntary program, particularly in an environment in which the agency is pleading with Capitol Hill for resources and expects the FY14 level of phone service to drop well below 70 percent.

Solutions:

A statement to taxpayers, tax professionals, and Congress that the agency plans to support aggressively its original, pre-Loving, return preparer oversight program is perfectly defensible. It acknowledges that IRS has in fact been doing something in this space for a long time. This approach does not dilute and is ready to go right now.

We know that some of the roughly 350,000 unenrolled preparers would be unable to pass the EA exam, but pumping up numbers is not—nor should it be—the goal here. At the same time, the agency has never tried to promote vigorously the credential and our suggestion that the agency consider this approach is not unreasonable. At the very least, while we wait for Congressional action, we would be certain that IRS wasn't undermining the very program it needs to protect taxpayers (and the fisc).

In the alternative, IRS should consider a voluntary RTRP program. That program has been vetted thoroughly and has industry buy-in and the minimum level of rigor necessary to pass muster. If IRS announced this move shortly, it could claim victory and it could maintain momentum—one of its stated goals—by using the RTRP program.

In order to re-establish the minimal competency test, IRS would need to launch it in the 2016 filing season, but this much more reasonable timeframe allows for an orderly transition. The Service could trumpet the existing program in the short term (which limits the downside risk that some may criticize the agency for inaction), give preparers and stakeholders plenty of time to gear up for the new program, and signal clearly to the marketplace the direction in which the agency will turn when Congress provides the authority to run a full bore program.

Both approaches—or a hybrid—creates inevitability, certainty, and merit.

[4] See http://www.whitehouse.gov/omb/circulars_a025

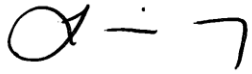
Conclusion:

We understand that the annual filing season creates long cycles but do not believe that letting dates drive policy decisions leads to desirable outcomes. IRS has not demonstrated a compelling need to create a new program in time for the 2015 filing season and stakeholders should not have to live with the fallout from such a precipitous decision.

We ask that you withdraw the proposal. If we are trying to protect taxpayers, elevate the profession, and improve tax administration, we cannot sacrifice program integrity on the altar of expediency.

NAEA appreciates the opportunity to respond in writing to IRS' proposed voluntary annual filing season certificate program. We look forward to ongoing conversations centered on building a strong framework for return preparer oversight.

Sincerely,



Lonnie Gary, EA, USTCP
President

Encl.: (2)

cc: Chairman Wyden
Ranking Member Hatch
Chairman Camp
Ranking Member Levin
Chairman Boustany
Ranking Member Lewis
John Dalrymple, Deputy Commissioner for Services and Enforcement
Carol Campbell, Director, Return Preparer Office
Karen Hawkins, Director, Office of Professional Responsibility