

By U.S. Mail and e-mail to www.regulations.gov

April 26, 2010

Internal Revenue Service
CC:PA:LPD:PR (REG-134235-08), Room 5205
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Furnishing Identifying Number of Tax Return Preparer (REG-134235-08)

The National Association of Enrolled Agents (NAEA) appreciates the opportunities IRS has offered to provide input as the agency attempts to implement a program to increase return preparer accuracy and protect taxpayers from those who cannot or will not interpret the Internal Revenue Code (IRC) correctly. As the organization representing the interests of 46,000 enrolled agents, NAEA is well positioned to offer an informed and practical perspective about how to increase a taxpayer's confidence that his/her return preparer is producing a true, complete and accurate tax return.

With respect to the § 6109 proposed regulations at hand, we note that they are in the main both straightforward and reasonable. Nonetheless, we raise the following issues for the agency's consideration:

- i. Tax return preparer definition—The regulations, in § 1.6109-2(g), define the term tax return preparer. The provisions of paragraph (g) are illustrated by four examples. The first two differentiate between back office staff who input information collected by a tax return preparer and the staff person who "interviews" the taxpayer. The most relevant standard presented in both examples is whether the individual "exercises any discretion or independent judgment as to the client's underlying tax position."

We would suggest the inclusion of an intermediate example where the staff person assists in the collection of data from the taxpayer using a questionnaire or tax organizer prepared by the registered tax preparer and is supervised directly by the tax return preparer. The reality is often much of the upfront data collected does not require any discretion or independent judgment on the part of the individual assisting the taxpayer. This data can lead to the individual inputting the data directly or it might indicate the need for a registered tax preparer to do an interview of taxpayer, for instance on issues such as dependents or earned income credit.

- ii. International preparers—The regulations should provide guidance for the registration of foreign tax preparers without social security numbers and who have not filed a U.S. tax return. We understand that over 200 U.S. tax accountants practicing in London alone, and thousands of others all over

the world. Further, some 200,000 U.S. citizens in the United Kingdom alone require the services of specialized tax preparers who understand the intricacies of, for instance, the US/UK Income Tax Treaty, the US/UK Inheritance Tax Treaty, and the US/UK Totalization Agreements. Many of the specialists have chosen to become enrolled agents in order to better represent United States citizens. We suggest IRS develop a mechanism for these already enrolled practitioners to become registered. Please keep in mind, should the agency consider a manual process (not that we recommend that tack), the international post can be notoriously slow.

- iii. Aggressive timeframe—Essentially, IRS is requiring all paid preparers who file tax returns or claims for refund after December 31, 2010 to affix a PTIN to the document in question. The registration requirement does not except current Circular 230 practitioners who hold a valid PTIN, even enrolled agents who are already licensed by the agency and who undergo background checks upon renewal.

Aside from our concern about what appears to be a redundant registration requirement (EAs are already governed by the agency and must apply and pay for a renewal that includes background checks), we are concerned about the timeframe the agency has allowed the external vendor to create the registration infrastructure. While the agency issued a Request for Proposal on January 13, 2010, to the best of our knowledge an award has not yet been made. At best, assuming no contract protests, the selected vendor would have four months to produce the system. Should anything unanticipated slow the registration delivery date, we wonder whether the agency has a contingency plan that would allow for a later implementation date of the mandatory PTIN use.

- iv. Rationalize EA and PTIN renewal cycles—Enrolled agents renew their license to practice every three years by completing a Form 8554 (Application for Renewal of Enrollment to Practice Before the Internal Revenue Service) and paying an attendant user fee. OPR checks an enrolled agent's filing history to ensure all personal and business federal taxes have been timely filed and paid.

We question why an enrolled agent—or any other practitioner who renews their right to practice before the agency—should be saddled with two three-year renewal cycles, one for a PTIN and the other for the right to represent taxpayers when the work the Service is doing is largely redundant. We strongly suggest that the Form 8554 renewal also serve as the renewal for the PTIN registration. This would, we hope, eliminate a duplicate process and a duplicate fee.

- v. Tax compliance check—As part of the PTIN application process, a paid preparer will be subject to an initial tax compliance check (*i.e.*, a determination whether the preparer has timely filed personal and business

- tax returns and has paid taxes due). We note the proposed regs allow a preparer to be considered in payment compliance if he/she has made "acceptable arrangements" with the agency, including an approved installment agreement. While we agree with this definition of payment compliance, we wonder whether IRS will allow an applicant the opportunity to address his/her non-compliance and to what extent the agency plans to define compliance.
- vi. Practitioner/Tax Return Preparer Terminology—As part of the IRS promotional program and in **any** communication around the effort to regulate paid tax return preparers, the agency must differentiate between registered tax return preparers and the unlimited practice authority of "federally authorized tax practitioners" as defined in § 7525. It is important to be consistent in the use of the terms "registered tax return preparers" and federally authorized tax practitioners and clear in the difference between preparers and practitioners.
- vii. Fee retention—While the proposed regs are silent on retaining the fees for PTIN registration, we believe the agency must be permitted to apply user fees to the cost of administering the oversight program, including the cost of enforcement.

A meaningful oversight regime presents the Service with a significant opportunity both to increase tax compliance and to level the playing field for all paid preparers. While we offer only a few observations on the § 6109 proposed regs, we suggest that the ultimate success or failure of this enterprise will rest upon thoughtful rule making and decisions centered on what is good for taxpayers rather than what is expedient for the agency or for the million or so unregulated preparers.

NAEA appreciates the opportunity to submit comments on REG-134235-08 § 6109 proposed regs. Should you seek further clarification or explanation of our positions, please contact NAEA at (202) 822-6232.

Sincerely,



Sandra Martin, EA
President

cc: Douglas Shulman, Commissioner, Internal Revenue Service
Mark Ernst, Deputy Commissioner for Operations Support
Karen Hawkins, Director, Office of Professional Responsibility
David Williams, Executive Lead, Return Preparer Regulations Implementation