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Federal Tax Return Preparer Registration: Navigating Final Regulations

Preparing for New Circular 230 Preparer Standard, Competency Testing
and Continuing Education Requirements

WEDNESDAY, AUGUST 3, 2011

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

Preston Benoit, Acting Deputy Director, Return Preparer Office, Internal Revenue Service,
Washington, D.C.

Pietro Canestrelli, Attorney, Reid & Hellyer, Temecula, Calif.

Chad Muller, Shareholder, Chamberlain Hrdlicka, San Antonio

Cathy Stopyra, Senior Manager, National Tax, BDO USA, Woodbridge, N.J.

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Federal Tax Return Preparer Registration: Navigating Final Regulations Seminar

Aug. 3, 2011

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Today's Program

Background On Return Preparer Registration
[Cathy Stopyra]

Slide 7 - Slide 11

Previously Resolved Matters With Preparer Registration
[Cathy Stopyra]

Slide 12 - Slide 21

Key Terms Of Final Circular 230 Regulations
[Preston Benoit and Pietro Canestrelli]

Slide 22 - Slide 37

Actions To Consider Given The Final Regulations
[Chad Muller]

Slide 38 - Slide 48

Cathy Stopyra, BDO USA LLP

BACKGROUND ON RETURN PREPARER REGISTRATION

IR-2009-57

June 4, 2009

IRS Launches Tax Return Preparer Review

TWO GOALS:

- ✓ *Increase Taxpayer Compliance*
- ✓ *Regulation of Tax Return Preparers*



Recommendations

Publication 4832

January 2010

Mandatory registration for tax return preparers

Competency examination requirement

Continuing professional education

Ethical standards

Tax return preparer enforcement

Tax return preparations software

Refund settlement products

Public awareness and service enhancements



IR-2010-9

Aug. 19, 2010

PTIN Requirement *CIRCULAR 230 Proposed Regs*

- ✓ *Oversight of federal tax return preparation*
 - ✓ *Must obtain PTIN*
- ✓ *Establish a registered tax return preparer designation*



Final Regulations Sept. 30, 2010

Internal Revenue Code Sect. 6109 Guidance

Identifying number

Increase tax compliance

Preparers: Knowledgeable, skilled, ethical



Cathy Stopyra, BDO USA LLP

**PREVIOUSLY RESOLVED
MATTERS WITH PREPARER
REGISTRATION**



Preparer Tax Identification Number

Points to remember
FOR
Tax return preparers

Application Process

There are two ways to apply for your PTIN

- 1.) Online
- 2.) Form W-12



Suitability checks

- 1.) Felonies within past 10 years
- 2.) Tax compliance
- 3.) Fingerprinting



Confirmation

PTIN Application Confirmation:

Your application for a PTIN has been accepted. The following are details about your PTIN.

You must use this number on any tax return or claim for refund you sign as a paid tax return preparer on or after January 1, 2011. In the past, tax return preparers could choose to use their social security numbers when they signed tax returns or claims for refund they prepared for a fee. As of January 1, 2011, this practice is no longer allowed.

You may wish to print this page for your records. Also, a welcome letter containing your PTIN and additional guidance will be emailed to you generally within 24 hours.

If you need further assistance with the online PTIN system, contact the IRS Tax Professional PTIN Information Line.

Name: Cathy Stopyra

PTIN: P00800001

Status: Active

Expiration Date: 12/31/2011





Provision PTIN

- Applicant not in compliance with federal taxes
 - ❖ Individual
 - ❖ Corporate
 - ❖ Business
 - ❖ Employment
- Applicant convicted of a felony
 - ❖ In the last 10 years
- Applicant has not satisfied testing requirements
 - ❖ Testing due to beginning mid-2011

The provisional status is temporary until the condition is resolved, or reviewed and cleared.

After You Obtain Your PTIN

Essentials For Maintaining Status Non-Federally Authorized Practitioners

- Competency testing
 - ❖ Available October 2011
 - ❖ Complete by December 2013
- Continuing professional education
 - ❖ Requirement expected to begin 2012
 - ❖ 15 credit hours/year
- Fingerprint/background check
 - ❖ Supervised/non-1040 preparers
 - ❖ October 2011



After You Obtain Your PTIN (Cont.)

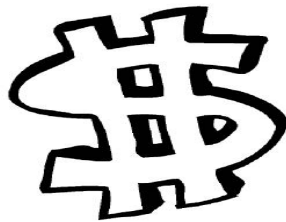
Essentials For Maintaining Status CPAs, Attorneys And Enrolled Agents

- Competency testing
 - ❖ Waived for those who are active and in good standing
- Continuing professional education
 - ❖ Follow individual licensing agency requirements
- Fingerprint/background check
 - ❖ Waived for those who are active and in good standing



Current Fee

Current annual Fee is \$64.25 - calendar year



\$50.00 to IRS for educational, compliance and outreach purposes

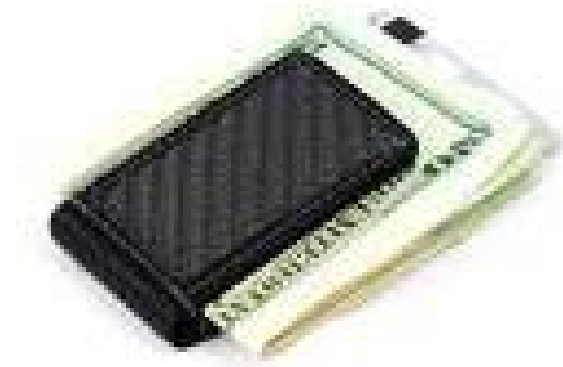
\$14.25 to vendor for services

PTINs issued before 01/01/2011 will expire 12/31/2011

Renewal period opens October 2011; must renew before 1/1/2012

Potential Costs

- ✓ Competency test charge
To be determined
- ✓ Fingerprinting charge
To be determined
- ✓ Non-compliance fine
IRC 6695 penalties



Application Problems?

IRS Tax Professional PTIN Information Line

- Toll-free: 877-613-PTIN (7846)
- TTY: 877-613-3686
- International: +1 915-342-5655



Monday thru Friday
8:00 a.m. to 5:00 p.m.
Central Time

Preston Benoit, Internal Revenue Service

Pietro Canestrelli, Reid & Hellyer

KEY TERMS OF FINAL CIRCULAR 230 REGULATIONS

Circular 230 Amendments (T.D. 9527)

www.irs.gov/taxpros

- Established registered tax return preparer designation
- Redefined practice and who may practice
- Established Return Preparer Office
- Revised criteria for CE providers
- Expanded conduct provisions to more preparers
- Revised numerous other conduct and discipline sections

Registered Tax Return Preparer

www.irs.gov/taxpros

- Initial requirements
 - Be at least 18 years old
 - Pass a tax compliance check
 - Pass a background check
 - Pass a competency test
- Ongoing requirements
 - Obtain annual continuing education courses
 - Renew PTIN annually
- Notice 2011-45 restricts use of this term until requirements are met

Advertising And Solicitation Rules

Changes to Sect. §10.30(a)(1)

General prohibition on false advertising

“A practitioner may not, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, or coercive statement or claim; or a misleading or deceptive statement or claim.”

Specific Prohibitions

- Tax preparers cannot use “certified” in advertising.
- Tax preparers cannot imply an employer/employee relationship with the IRS.

Specifically Allowed Language

Proposed language was “registered tax return preparer with the Internal Revenue Service.”

Final language was “registered tax return preparer by the Internal Revenue Service.”

Provisions on Practitioner Conduct And Discipline

- General discipline procedural framework
- Changes in final regulation

General Discipline Procedural Framework Sect. 10.60

I. Start of case

- A. Investigation (failure to file personal tax returns)
- B. License revoked or crime
- C. Penalty

II. Conference

- A. Informal
- B. Can accept sanctions

III. Formal proceeding before administrative law judge (ALJ)

IV. Complaint and answer

- A. 30 days to answer or default
- B. Supplemental charges and reply

General Discipline Procedural Framework Sect. 10.60 (Cont.)

I. Pre-hearing

- A. 180 days max to trial
- B. Discovery
- C. Pre-hearing memorandum

II. Hearings

- A. Examination and cross-examination
- B. Can ask for decision on written record

III. Decision

- A. Barred from practicing before the IRS
- B. Monetary sanctions

IV. Appeal to secretary of Treasury

New Provisions For Appraisers

1. Amended §10.60(b) allows the IRS to reprimand or disqualify an appraiser if:

1. The appraiser was assessed a penalty under IRC §§6694, 6695A, or 6701
2. It is determined that the “appraiser acted willfully, recklessly, or through gross incompetence with respect to the proscribed conduct.”

2. Amended §10.50 allows sanctions (disqualification) against a appraiser.

1. Barred from presenting evidence or testimony in any administrative proceeding before the Department of Treasury or IRS
2. Appraisals prior to disqualification are also barred.

Other New Provisions

I. The IRS may accept a practitioner's offer of consent to be sanctioned under §10.50 in lieu of instituting or continuing a proceeding under §10.60(a).

II. Amended §10.77 provides clarifying information regarding the procedure for filing an appeal of an ALJ's decision to the Secretary of Treasury.

New Continuing Education Requirement

www.irs.gov/taxpros

- Registered tax return preparers will be required to complete 15 hours of CE per year:
 - Three hours of federal tax law updates
 - Two hours of ethics
 - 10 hours of federal tax law
- Expected to begin in 2012 for RTRPs and RTRP candidates (provisional PTIN holders)

§10.9 Continuing Education Providers

www.irs.gov/taxpros

- CE providers must be:
 - An accredited education institution,
 - Recognized by a state licensing body,
 - Recognized by an approved accreditor, or
 - Another professional organization, society or business recognized by the IRS
- All providers must obtain a provider number as well as program numbers for each course, but there will be no requirement for approval of each course.

§10.9 Continuing Education Providers (Cont.)

www.irs.gov/taxpros

- RFP issued June 30 to seek vendor to assist in registration of CE providers
- Application process to become an approved CE provider is being revamped.
- Currently, there are no approved CE providers for RTRP courses.

Competency Testing

www.irs.gov/taxpros

- All tax return preparers will be required to pass a competency test except attorneys, CPAs, enrolled agents, supervised preparers and non-1040 preparers.
 - Supervised preparers: Those who do not sign returns and are employed by attorney, CPA, or EA firms and are supervised by an attorney, CPA or EA
 - Non-1040 preparers: Those who do not prepare any Form 1040 series returns

Competency Testing (Cont.)

www.irs.gov/taxpros

- Test specifications coming soon
 - Demonstration of minimum competency
 - One level, Form 1040 series only
 - One-time requirement, not annual
- Schedule at hundreds of Prometric testing centers worldwide
- Estimated fee range: \$100 to 125
- Estimated start date: October 2011
- Provisional PTIN holders have until end of 2013

Chad Muller, Chamberlain Hrdlicka

**ACTIONS TO CONSIDER
GIVEN THE FINAL
REGULATIONS**

Manner Of Suspension Or Denial

Presently, a practitioner/preparer may be suspended or denied the privilege of preparing and filing returns in four different ways:

- Injunction entered by a federal district court
- By consent or the entry of a decision under Circular 230
- Denial or revocation of EFIN status
- Denial or revocation of a PTIN or a provisional PTIN

Authority To Suspend Or Disbar

- The final regulations* expand the definition of practice before the IRS to include all matters relating to a taxpayer's rights, privileges, or liabilities. This includes preparing and/or filing tax returns. Final regulations, §10.2(a)(4)
- §10.53 requires employees of the IRS to promptly report violations of Circular 230.
- Circular 230, §10.50(a) provides authority to censure, suspend or disbar any practitioner shown to be incompetent or disreputable.
- At present, this authority resides in the Office of Professional Responsibility (OPR), but the final regulations* let the Commissioner delegate this authority to other offices.

* T.D. 9527

Incompetent And Disreputable Conduct Defined

- §10.51 defines incompetent and disreputable conduct to include a laundry list of misconduct including:
 - Willfully providing false or misleading information to the Department of the Treasury, or any officer or employee thereof, or to any tribunal authority to pass upon federal tax matters
 - Willfully failing to sign a tax return prepared by the practitioner

The Final Regulations Expand That List Of Misconduct To Include:

- Willfully failing to file on magnetic or other electronic media a tax return prepared by the practitioner when the practitioner is required to do so, unless the failure is due to reasonable cause and not due to willful neglect,
- Willfully preparing all or substantially all, or signing a tax return when the practitioner does not possess a current or otherwise valid preparer tax identification number or other prescribed identifying number; and
- Willfully representing a taxpayer before an officer or employee of the IRS, unless the practitioner is authorized to do so.

§10.51(16)-(18)

Incompetent And Disreputable Conduct (Cont.)

- §10.34 provides the “standards” applicable to the tax advice and to the preparation of tax returns.
 - The final regulations conform §10.34 to the civil penalty standards in Code Sect. 6694 for return preparers.
 - However, “a practitioner liable for a penalty under section 6694 is not automatically subject to discipline under § 10.34(a) ... ”*
- The Internal Revenue Manual provides that “examiners should exercise discretion in making referrals of asserted IRC 6694 (a) penalties to OPR ...” Referrals should be based on a pattern of failing to meet the required penalty standards under IRC 6694(a). IRM 20.1.6.11.3 (09-17-2010)
- There is no statute of limitations for certain violations of Circular 230 involving professional misconduct of §10.34. OPR v. Hernandez, irs.gov/OPR

* T.D. 9527, Summary Comments and Explanation of Revisions

Final Regulations Permit Delegation Of Power To Sanction Preparers

- The IRS recognizes that the Office of Professional Responsibility is central to the IRS' goal of maintaining high standards of ethical conduct for all practitioners and that the office must operate independently from IRS functions enforcing Title 26 requirements.
- The final regulations accommodate the internal structure by generally removing references to the Office of Professional Responsibility. The final regulations allow the flexibility to adjust responsibility appropriately between the offices as the return preparer initiative is implemented. The commissioner may delegate necessary authorities to appropriate offices.

* T.D. 9527, Summary Comments and Explanation of Revisions

Procedure For Imposing Sanctions

- §§10.20, 10.50, 10.60 and 10.62 have been modified and are now open-ended as to which office could administer sanctions.
- §10.62 provides that a complaint must name the respondent, provide a clear and concise description of the facts and law that constitute the basis for the proceeding, and be signed by an authorized representative of the IRS (emphasis supplied).

Procedures For Imposing Sanctions Differ

- Under Circular 230, a practitioner is entitled to substantial due process rights, including the right to a hearing before an administrative law judge (§10.70) and the right to appeal to the Treasury Appellate Authority (§10.77).
- The Service is developing internal guidelines which will require referral to OPR of a proposed denial or revocation of a PTIN or a provisional PTIN by the return preparer office (RPO). The referrals will include:
 - Appeals from notices with proposed denials of the initial PTIN
 - Denials of renewals for compliance and deficient CPE
 - Appeals from denials/terminations of PTIN respecting enrolled status
 - Appeals respecting supervisory PTIN holders for Circular 230 violations

Review Of Revocation Of E-Filing Status

- Under Publication 3112 and Rev. Proc. 2007-40, a practitioner's rights to review of the revocation of e-filing status are presently more limited. There is presently no provision for referral to OPR, nor is there a provision for a hearing by an ALJ or an appeal to Treasury.
 - Rev. Proc. 2007-40, Sect. 8, provides the right to administrative review of the denial of an applicant's request for participation in IRS e-file. However, during the administrative review process, the denial of participation remains in effect. Id.
 - An e-file provider may be suspended from participation in IRS e-file for violations that have a significant adverse impact on the quality of electronically filed returns.
 - The provider must protest the proposed sanction within 30 days of the receipt of the denial letter.
 - Where the denial is affirmed, the provider may appeal to the Office of Appeals.

Conclusion

The denial of the ability to practice before the IRS can occur in several ways, including the denial or revocation of a PTIN and denial or revocation of e-file status. These actions must and will be coordinated with the due process requirements set forth in Circular 230.

Q&A

To ask a question from your touchtone phone, press *1.
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