By Candace L. Witherspoon

IRS Certification and State Regulation of Tax Preparers

With the IRS having difficulty implementing a program to regulate and improve the quality of tax preparers, several states are enacting their own regulations.

The IRS and various state governments are continuing to work to improve the quality of tax returns and decrease the number of unscrupulous tax preparers. Following the decision by the U.S. Court of Appeals that the IRS lacks the authority to regulate federal tax return preparers under the Registered Tax Return Preparer (RTRP) program (*Loving v. IRS*, No. 13-5061), the Service unveiled details of a voluntary preparer certification program. And several states have enacted or are considering regulations that seek to improve the quality of returns and decrease preparer fraud.

Annual Filing Season Program

The new IRS voluntary program is called the Annual Filing Season Program. It requires preparers to earn 18 hours of continuing education: six hours of a federal tax filing season refresher course, 10 hours of federal tax law topics, and two hours of ethics. In addition, preparers must agree to comply with the duties and requirements of Circular 230, *Regulations Governing Practice before the Internal Revenue Service* (31 C.F.R. Part 10). Preparers who complete the program, as well as preparers who are CPAs, enrolled agents (EA), and attorneys, will be listed on the IRS website in time for the 2015 filing season and be able to represent their clients before the IRS. Although the program will be fully implemented in 2015, those seeking recognition for the 2015 filing season must complete 11 hours of continuing education in 2014.

But the Annual Filing Season Program may suffer the same fate as the now defunct RTRP program. In May 2014, a month before the IRS released the program's details, William E. Balhoff, chairman of the American Institute of Certified Public Accountants (AICPA), and Barry Melancon, AICPA president and CEO, sent a letter to the IRS commissioner, expressing concerns about the program's legality and impact on taxpayers.

On July 15, shortly after the program's release date, the AICPA filed suit against the IRS in the U.S. District Court for the District of Columbia. The AICPA's argument has three points: First, the AICPA argues that the program violated the notice and comment requirements of the Administrative Procedure Act since it was implemented through a revenue procedure. Second, the AICPA argues the program is "an illegitimate exercise of government power" and will be interpreted as a way to circumvent the *Loving* decision. Third, the AICPA contends that no statute authorizes such programs. Additionally, the AICPA believes the program fails to address the problems arising from unethical preparers engaged in completing fraudulent returns, will cause market confusion, and is "de facto" mandatory because preparers who choose not to participate will most likely lose clients.

State-Mandated Tax Preparer Licensing

Currently, only four states regulate tax preparers: California, Oregon, New York, and Maryland. Each state imposes its own requirements.

California: Tax preparers must complete a 60-hour qualifying education course, acquire a $5,000 tax preparer bond, obtain a tax preparer identification number (TPIN) from the IRS, and pay a $25 yearly registration fee. California CPAs, California attorneys, EAs, certain employees of exempt and registered tax preparers, and certain banking or trust officials are exempted from the requirements.

Oregon: Tax preparers must be at least 18 years old, have a high school diploma or GED, complete 80 hours of tax law education, and pass a proficiency test.

New York: Tax preparers must acquire a TPIN from the IRS and pay a $100 yearly fee (if the preparer was paid to prepare at least 10 returns for the calendar year 2013 and expects to prepare at least one return for calendar year 2014 or the preparer expects to be a paid preparer for at least 10 returns for calendar year 2014). In addition, the preparers must not have four or more months of child support payments in arrears. CPAs, EAs, public accountants (PAs), attorneys, or employees of CPAs, EAs, PAs, or attorneys, clerical workers, and volunteer tax preparers are exempted from the requirements.

Maryland: Tax preparers must be at least 18 years old, have a high school diploma or GED, pay a $100 biannual registration fee, obtain a TPIN from the IRS, and pass a proficiency exam (available later this year) by December 31, 2015. CPAs, EAs, attorneys, employees or assistants of exempted tax preparers, and governmental employees in the commission of employment are exempted.

Progress in Other States

In 2013, to address the increased interest in state regulation of tax preparers, the National Consumer Law Center (NCLC) revised the Model Individual Tax Preparer Act, which provides best practices for tax preparer licensing programs. This model Act can be used by proponents of tax preparer regulation to develop state programs. The key recommendations for licensing requirements include establishing a Board of Individual Tax Preparers to oversee the licensing program and requiring tax preparers to:

- Be at least 18 years old, possess a high school diploma or GED, and be of good moral character;
- Obtain a TPIN from the IRS;
- Obtain 60 hours of education in basic personal income tax law, theory, and practice;
- Pass a proficiency exam;
- Secure a five-year inflation adjusted bond; and
- Pay a registration fee.

In addition, the Act recommends exempting CPAs, attorneys, EAs, government employees completing a return in the performance of official duties, and employees or volunteers of Volunteer Income Tax Assistance (VITA) programs.

Supporters of tax preparer regulation in New Jersey and Ohio have made progress in enacting a similar statute. New Jersey is the furthest along in development. The Tax Preparers Licensing Act has been referred to the state's Assembly Regulated Professions Committee. This Act mirrors the key recommendations of the Model Individual Tax Preparer Act, excluding the requirement to obtain a bond. In addition, similar to California, the Act excludes only New Jersey-licensed CPAs and attorneys, EAs, and employees completing a tax return for the employer's business from licensing requirements.

Ohio's effort is in the early stages. David Rothstein, director of public affairs for the Neighborhood Housing Services of Greater Cleveland, said that he is working with Republicans and Democrats in the legislature to progress minimum competency and disclosure requirements.

Since the IRS is having little success in regulating tax preparers, state-level programs may be the best option moving forward. With the debut of the Annual Filing Season program, states may opt to *require* tax preparers to complete the IRS voluntary program to become state licensed, thereby reducing some costs normally borne by the states in administering state licensing programs. But the IRS program may face insurmountable legal obstacles and fall woefully short in curtailing the increasing number of fraudulent returns. The benefits of creating and administrating state-level licensing programs for preparers of federal tax returns could, in some instances, outweigh the cost, as many states piggyback onto the federal tax form in the calculation of state income tax. **SF**

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