

**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS**

**Comments on Proposed Regulations, REG-134235-08  
Relating to the Issuance of Preparer Tax Identification Numbers by the  
IRS to Tax Return Preparers**

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In REG-134235-08, the IRS proposed amendments to the regulations under Internal Revenue Code section 6109. The proposed regulations generally: (1) require tax return preparers, including nonsigning preparers, to apply for or renew a preparer tax identification number (PTIN) and exclusively use that PTIN when signing tax returns generally filed after December 31, 2010; and (2) authorize the Service to prescribe a user fee for the application or renewal of a PTIN. The IRS expects to issue additional regulations or guidance for tax return preparers to address such issues as testing, continuing professional education, recordkeeping requirements, and additional user fees.

**GENERAL COMMENTS**

The AICPA has been in the forefront of the public discussion over the last several years with the IRS and congressional officials about the most effective ways to regulate tax return preparers. In this context, we appreciate Commissioner Shulman's January 2010 release of the Service's preparer review report and the announcement to regulate tax return preparers by requiring nationwide registration of tax return preparers by the 2011 filing season. We strongly support the IRS's goals (as reflected by REG-134235-08 and the Commissioner's January 2010 report) of enhancing compliance and elevating the ethical conduct of tax return preparers, objectives which are consistent with the AICPA's Code of Professional Conduct and the Statements on Standards for Tax Services.

Commissioner Shulman's January 2010 report recommends that tax return preparers be required to obtain and use a PTIN as the exclusive identifying number for the preparation of tax returns for compensation. We believe the issuance of one unique identifying number to each tax return preparer, coupled with making all preparers subject to the professional ethics standards of Circular 230 and the Code's civil preparer penalty regime, will prove to be an effective method for addressing the Commissioner's goals of improved competency and ethics from qualified tax professionals and strengthening the integrity of the tax system.

The underlying objective of REG-134235-08 is to establish the initial process for tax returns preparers to start applying for or renewing PTINs beginning on or about September 1, 2010 for use in the preparation of tax returns beginning generally with the 2011 filing season. However,

as highlighted in our substantive comments below, we have some serious concerns with aspects of the proposed regulations; and most notably the nonsigning preparer construct.

Although not addressed by REG-134235-08, the AICPA must continue to emphasize its concerns about the other recommendations contained in the January 2010 report (and which will be subject to future IRS guidance). The AICPA has previously expressed its concerns about the IRS plans to provide tax return preparers who are not already CPAs, enrolled agents or attorneys with an apparent credential based on limited qualifications. We believe that a new IRS examination process should be delayed as: (1) a successful implementation of registration and use of PTINs, along with the imposition of Circular 230 on all preparers should be sufficient to address unethical and/or incompetent tax return preparation and provide tremendous gains to tax administration in general; (2) it may cause confusion among taxpayers about the relative qualifications of tax return preparers; and (3) the additional burdens to the tax preparers and pass through of these costs to the taxpaying public should be considered.

We are well aware that the IRS plans to conduct a campaign to educate the public about the need to regulate tax return preparers. In this regard, the IRS can be assured that we will work with the Service to help it implement the January report's recommendations to meet both the public interest and CPA practice requirements.

The AICPA's specific comments provided below focus on: (1) the extension of the PTIN requirement to nonsigning employees of CPA firms; (2) the appropriate title for persons receiving a PTIN, (3) the Service's imposition of "reasonable user fees," (4) foreign preparers; and (5) the need for the IRS to be flexible with the comment period deadline.

## **SPECIFIC COMMENTS**

### **Nonsigning Employees of CPA firms**

Proposed Treas. Reg. section 1.6109-2(g) provides, in part:

Only for purposes of paragraphs (d), (e), and (f) of this section, the term tax return preparer means any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax. Factors to consider in determining whether an individual is a tax return preparer under this paragraph (g) include, but are not limited to, the complexity of the work performed by the individual relative to the overall complexity of the tax return or claim for refund of tax; the amount of the items of income, deductions, or losses attributable to the work performed by the individual relative to the total amount of income, deductions, or losses required to be correctly reported on the tax return or claim for refund of tax; and the

amount of tax or credit attributable to the work performed by the individual relative to the total tax liability required to be correctly reported on the tax return or claim for refund of tax. A tax return preparer does not include an individual who is not otherwise a tax return preparer as that term is defined in §301.7701-15(b)(2), or who is an individual described in §301.7701-15(f).

The consequence of falling within the definition of “tax return preparer” as provided above is more than just the requirement to obtain a PTIN. We understand that the IRS intends to issue additional regulations or guidance that would, for all “tax return preparers” who are required to obtain PTINs and who are not otherwise exempt, require competency testing and continuing professional education. CPAs, attorneys and enrolled agents are subject to the requirement to obtain a PTIN; however, because of their current education, experience, and practice obligations as Circular 230 practitioners, they are exempt from testing and CPE requirements under Commissioner Shulman’s preparer review report.

For the reasons discussed below, we recommend that the proposed regulations specify that the PTIN, testing and CPE requirements not apply to nonsigning preparer-employees of CPA firms; or alternatively, not apply to nonsigning preparers working under the supervision of a CPA, attorney, or enrolled agent. Assigning a PTIN will allow the Service to track signing preparers who are not competent. We believe that if there are nonsigning preparers working for a signing preparer with a PTIN, the Service will be able to find the incompetent preparers by contacting the signing preparer who will have the records to determine who may have prepared substantially all of the tax return. There is no need to require all of the preparers working for the signing preparer to also have PTINs.

In general, CPA firms are required to register with their state boards of accountancy which regulate the firms and the CPAs individually, and subject the firms and their employees to the states’ ethical and competency rules. This provides sufficient protection for the public from unscrupulous or incompetent CPAs or CPA firms. Further, CPAs and CPA firms are subject to IRS oversight and discipline as specified in Circular 230. Thus, the requirement that the signing preparer obtain and place his PTIN on the return should give the IRS sufficient information to monitor the CPA’s practice without the need to extend the PTIN process to nonsigning preparers. When combined with regulation by the state boards of accountancy, we even more strongly believe the PTIN requirement should not be extended to nonsigning preparers of CPA firms. This is an important distinction from tax return preparer businesses not subject to this level of regulation and scrutiny.

Preparation of returns in a CPA firm often involves the use of staff who are working toward CPA status, some of whom have passed the CPA exam, but have not yet fulfilled a one or two-year experience requirement for licensure. In addition, paraprofessional personnel sometimes assist in tax return preparation. Regardless of status, a CPA generally reviews and signs the return and

is the individual responsible for the overall accuracy of the preparation of the return under both the Code's preparer penalty provisions and the CPA profession's ethics rules. Registration of personnel supervised by a signing CPA would place an unnecessary financial burden on CPA firms, particularly smaller firms as noted below, and would not improve the accuracy of returns prepared for clients of CPA firms. Additionally, the definition of a nonsigning preparer is based on facts and circumstances, and therefore due to the subjective nature of these proposed regulations, firms may be forced to be over-inclusive in who must obtain a PTIN, adding additional burden to the CPA firms.

An exemption regime has worked well in Oregon, a state that has licensed all tax preparers of individual returns for over 25 years. ORS 673.610(5) specifically exempts CPAs and "[a]ny employee of a certified public accountant, public accountant or registered public accounting firm..." registered in any state from the licensure requirements of the Board of Tax Practitioners, the board which regulates tax preparers. Similar provisions apply in Maryland (section 102 of Title 21 the Business Occupations and Professions chapter of the Maryland code) and New York (Section 32(a)(14) of Ch 60 of the NY state laws).

While it is our strong position that the nonsigning employees of a CPA firm should not be required to obtain a PTIN, to the extent the IRS determines otherwise, we urge the Service to exempt the nonsigning employees of CPA firms from any testing and CPE requirements due to the extensive state board of accountancy oversight that exists for CPAs and CPA firms.

### **Appropriate Title for Persons Receiving a PTIN**

REG-134235-08 refers to CPAs, attorneys, enrolled agents, and "registered tax return preparers" as the types of individuals who will be required to register for a PTIN if such individuals will be preparing tax returns for compensation. We believe the title "registered tax return preparer," which generally refers to formerly un-enrolled preparers, may prove misleading to the public.

The title "registered tax return preparer" may cause confusion among taxpayers in the marketplace as the term may imply a higher level of professional capability and education when viewed in light of other comparable "registered" professionals. For example, a "registered" nurse or "registered" architect would often have 4 or more years of college education. However, under REG-134235-08, a "registered tax return preparer" would not be required to have a high school diploma, let alone a college degree or any academic grounding in the field of taxation.

The AICPA strongly recommends that the IRS refer to these formerly un-enrolled preparers as "authorized tax return preparers." We believe the title "authorized tax return preparer" is both a more accurate description of their status as a preparer and is less likely to mislead taxpayers with regard to their level of competence. The "authorized tax return preparer" title would blend well

with any public awareness campaign that the Service might develop to advise taxpayers about choosing a paid income tax return preparer. As we state in the General Comments section above, the IRS can be assured that we will work with the Service to help it implement the Service's January report's recommendations to meet both the public interest and CPA practice requirements.

### **Reasonable User Fees**

The preamble to the proposed regulations provides that:

[A] separate regulation addressing reasonable user fees will be proposed in the near future. Tax return preparers may be required to pay a user fee when first applying for a PTIN and at every renewal. Small entities may be affected by these costs if the entities choose to pay some or all of these fees for their employees.

Because of the impact that PTIN user fees may have on smaller practices, we would urge that such fees be set as low as possible. The amount of the user fee should be established with a view toward only covering the costs of issuing the PTIN, and we believe that the fee should not be set with a view towards generating surplus revenues or paying for increased staff to manage the various aspects of preparer regulation.

It would be our expectation that the majority of CPA firms and sole practitioners would reimburse their employees for PTIN user fees. The extension of the PTIN requirement to certain nonsigning preparers would impose potentially significant costs on CPA firms and sole practitioners, particularly with respect to those individuals who are employed on a part-time basis, who only spend part of their time providing tax services, or those who would be associated with returns solely in a nonsigning role. A PTIN user fee may be significant for some of these CPAs relative to the fees they receive for tax services. Finally, the PTIN user fee must be viewed in the context of other costs preparers may have to incur with respect to preparer regulation, such as fees for testing, lost time while preparing for the test, and the cost of continuing education. For some preparers, these federal costs are in addition to costs associated with preparer regulation by the states; e.g., the New York preparer registration fee is \$100 annually. These costs are particularly difficult to bear at a time when the economy is just beginning to recover from a very significant recession. Many smaller CPA firms would be disproportionately affected by the imposition of a user fee for staff who might otherwise be deemed nonsigning preparers.

In addition, we would recommend consideration of other ways to reduce the financial impact of PTIN user fees on sole practitioners and small firms. For example, we would recommend that if the determination is made to finalize the proposal to extend the PTIN requirement to nonsigning preparers, consideration be given to a lower user fee for nonsigning preparers.

## **Foreign Preparers**

The current Application for Preparer Tax Identification Number, Form W-7P, requires the applicant to provide his or her Social Security Number. Therefore, under the current PTIN regime, an individual who does not have a Social Security Number cannot receive a PTIN.

There are many tax return preparers who do not have Social Security Numbers because they are foreign nationals working outside the U.S. (“foreign preparers”). These “foreign preparers” may be employed by professional services firms or commercial preparers, and may be involved in preparing only U.S. tax returns or may also be involved in preparing returns of other jurisdictions (e.g., an employee of a firm of accountants licensed outside the U.S. who prepares U.S. tax returns as well as home-country returns for that firm’s clients). We believe that a careful analysis of foreign preparers must be made before finalization of these regulations.

We recommend that consideration be given to providing specific rules in Treas. Reg. section 1.6109-2 for foreign preparers with respect to the information they must provide in lieu of a Social Security Number. As the registration process for tax return preparers continues to be developed, we believe other issues related to foreign preparers will have to be addressed. For example, nonsigning foreign preparers working under the supervision of a CPA, attorney or enrolled agent signing preparer should not be required to obtain a PTIN. However, if nonsigning foreign preparers are required to obtain a PTIN, the process for obtaining the PTIN should be made as easy and flexible as possible.

## **The IRS Should Be Flexible With the Comment Period Deadline**

With the release of the proposed regulations on PTINs in late March 2010, the IRS has set a very tight 30-day deadline for comments on the regulations. While REG-134235-08 represents the first of several regulations (or other guidance) designed to implement the recommendations contained in the Commissioner’s January 2010 report, we are very concerned that these regulations were released for comment during the height of the tax filing season, at a time when tax return preparers are conscientiously working long hours to ensure the timely and proper filing of their clients, tax returns by April 15.

Nearly all of the state CPA societies, which are all independent entities from the AICPA, gear their society calendar, volunteer workload, and policy response apparatus to avoid conflict with the April 15 filing season deadline. In effect, the ability of these state societies to put together their thoughts on anything related to policy comments regarding legislation or regulations becomes extremely challenging between January 15 and April 15 of each year. We strongly urge the IRS to be flexible in accepting comments after the official April 26 deadline; and to give careful and close consideration to such comments when received. This is particularly important

when the Service will be receiving comments on a topic (i.e., preparer regulation) which will make dramatic changes in the way preparers do business, impacting the long-term livelihoods of hundreds of thousands of tax return preparers.