



May 21, 2014

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

Dear Commissioner Koskinen:

In reaction to the recent court decisions in *Loving v. I.R.S.*, you have indicated that the IRS should consider a “voluntary certification” program. The American Institute of Certified Public Accountants (AICPA) has deep concerns with regard to a voluntary system, and the speed with which the IRS is moving to implement such a system. We believe a voluntary program would create confusion regarding the relative proficiencies of the various types of preparers. In addition, the proposed voluntary system would undoubtedly leave the impression among most taxpayers that certain tax return preparers are endorsed by the Internal Revenue Service (IRS). As a practical matter, any voluntary regime constructed would still not address the problems with unethical and fraudulent tax return preparers. Finally, we are concerned that the IRS is rapidly moving forward without widely disseminating the proposal or seeking public comments.

We think the IRS should focus its efforts on utilization of the current preparer tax identification number (PTIN) program and increased taxpayer education, as discussed below.

Marketplace Confusion

We believe a voluntary program would result in increased confusion with respect to tax administration and the tax preparer community. The agency currently has a structured and regulated program available for tax return preparers seeking IRS licensing (i.e., enrolled agents) who do not have the prerequisites or desire to obtain a license to practice law or accounting. We think the IRS would undermine its existing program if the agency decided to freely validate tax return preparers without the corresponding regulatory responsibilities.

If the IRS adopts a voluntary certification regime, confusion between the different types of preparers will become even more pronounced. We foresee a tremendous challenge in explaining to taxpayers, as consumers, the difference between individuals with a PTIN, those preparers who are authorized (“enrolled”) to prepare returns and represent clients before the IRS, and individuals who have availed themselves of the voluntary regime.

Any attempt to explain the differences would invariably sound like an endorsement of only that subset of individuals who availed themselves of the voluntary regime. In short, we are concerned about the confusion that may be generated in the marketplace in an environment where PTIN holders may prepare returns, but may not be persons who subject themselves to an IRS “voluntary” program, and whether the consuming public would be able to discern the difference.

Utilization of PTIN Program

We encourage the IRS to focus on the implementation of a comprehensive preparer enforcement strategy as opposed to a voluntary regime. The registration of paid tax return preparers and the issuance of unique PTINs remain in effect post-*Loving*. Registration allows the accumulation of important data on activities of specific tax return preparers as well as classes of preparers in a way that allows the IRS to tailor compliance and education programs in the most efficient manner. We urge the IRS to utilize the current PTIN program to track preparer activity, identify patterns of fraud and incompetence across returns prepared by specific individuals, and to institute compliance programs to deal with incompetent or unethical preparers. A voluntary system would not accomplish this goal.

In addition, the IRS should more narrowly define the term “preparer” for PTIN purposes to exclude certain “supervised employees,” to avoid subjecting the profession to over-regulation. The current requirements in Treas. Reg. § 1.6109-2 regarding who needs a PTIN are overbroad due to the inclusion of non-signers who are appropriately supervised by professional, licensed signing tax return preparers. As a state regulatory matter, licensed professionals, such as CPAs, are responsible for work performed by unlicensed staff persons who assist in any tax return preparation effort.

We also believe the IRS should administer the penalties and sanctions *for which it currently has authority* to identify and hold accountable incompetent and unethical return preparers. Specifically, we think the IRS should direct its efforts on enforcing the following provisions against incompetent and unethical tax return preparers:

- Section 6694 – civil penalties for understatements due to unreasonable positions or willful or reckless conduct.
- Section 6695 – civil penalties for (i) failure to furnish a copy of the return to the taxpayer, (ii) failure to sign the return, (iii) failure to put the PTIN on the return, (iv) failure to retain copies of returns prepared or a list of taxpayers for whom returns have been prepared; and (v) failure to comply with due diligence requirements relating to EITC claims.
- Section 6701 – civil penalties for aiding or abetting an understatement.
- Section 6713 – civil penalties for disclosing or using taxpayer-provided information other than for return preparation.

- Section 7206 – criminal penalties, including imprisonment, for willfully aiding or assisting in the preparation of a fraudulent return.
- Section 7407 – authority to seek injunctions against return preparers engaging in specified behaviors, including fraudulent or deceptive conduct that substantially interferes with proper administration of the tax laws.

Engagement with Stakeholders & Public

The IRS should seek an open dialogue on the proposed voluntary certification program as well as more efficient measures to protect the public from unethical, fraudulent or incompetent preparers. Prior to *Loving*, the IRS had devoted an unprecedented amount of time listening to stakeholder concerns and suggestions regarding its rollout of a return preparer program, and as a result made numerous changes and adjustments to the program. We suggest that you take these same steps in assessing whether a voluntary certification program is in the best interests of the public.

Taxpayer Education

The AICPA strongly supports a strategy to better inform the taxpaying public. The IRS should implement a robust communications strategy to educate the public about the preparer's requirement to obtain a PTIN, renew the PTIN, and to include it on returns they prepare. Increased public awareness might mitigate some of the problems of preparers who do not have PTINs – the so-called “ghost preparers.” The IRS should also consider working with state tax authorities and the appropriate professional associations on a joint public service campaign.

IRS Resources

Recently, National Taxpayer Advocate Nina Olson noted that it may take “consecutive years of public education” on the value of the new type of preparer (e.g., individuals who have availed themselves of the voluntary regime) before such an IRS program can show at least some degree of success. However, we do not believe the expenditure of resources for marketing such a voluntary program, that even the IRS has promoted as an interim solution, is a prudent use of taxpayers' dollars. As you are aware, the AICPA has long-supported enhanced IRS funding to address taxpayer and preparer services. However, in a world of limited resources, where the IRS has indicated that resources are insufficient to fully cover services, we would encourage the application of the agency's appropriated resources to more effective measures.

Annual PTIN User Fees

Finally, we would appreciate more transparency with regard to the utilization of the annual PTIN user fees. Specifically, please explain how the user fees are currently

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utilized and whether you anticipate using the user fees to fund or partially fund any part of a voluntary certification program in the future.

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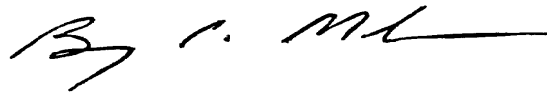
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If you have any questions, please contact Jeffrey A. Porter, Chair, Tax Executive Committee, at (304) 522-2553 or jporter@portercpa.com or Melissa Labant, AICPA Director of Tax Advocacy, at (202) 434-9234 or mlabant@aicpa.org.

Sincerely,



Jeffrey A. Porter, CPA
Chair, Tax Executive Committee



Barry C. Melancon, CPA, CGMA
AICPA, President & CEO

cc: Members of House Ways and Means Committee
Members of Senate Finance Committee
John Dalrymple, Deputy Commissioner for Services and Enforcement
Carol A. Campbell, Director, Return Preparer Office, Internal Revenue Service