




Change is



coming.

By Ken Dowdall, EA

*It would be an understatement to say that we are living in uncertain times. The tax industry is not immune to this trend. With all the new mandates being proposed by the IRS, what will your future as a tax professional hold? No one knows for sure, but one thing is clear—change is coming, ready or not...*

After years of talk and incremental changes, the next 36 months will probably see a significant restructuring of our profession and interaction with the IRS. There are three key things happening in the IRS that will underpin the revamping of the tax preparer paradigm.

### It's A Done Deal

The IRS is hiring 5,000–7,000 new agents this year and another 5,000 next year. Can you say, “Hello, auditor”? Significant future staff increases beyond 2010 are also anticipated.

The IRS is getting serious about shrinking the tax gap by increasing compliance. (Dare we say regaining their stature as the most feared organization in the world after the defunct KGB.)

As a corollary, you can add “trainer” to your job description! The IRS has been upfront with the fact that they can't effectively train this many new field agents very quickly, so they expect the paid preparer community to play a significant role in training as the IRS sends these “rookies” out to look at our clients' returns.

### Pending Legislation

You have undoubtedly been reading about the pending legislation that would significantly change the rules under which *all* paid tax return preparers function.

As you should know, in the current system, all tax preparers are governed by the rules in Circular 230. As a subgroup of all preparers, enrolled agents, CPAs, and attorneys are allowed to represent taxpayers before the IRS. Because this is an additional “privilege,” these preparers have additional requirements, responsibilities, and penalties, which are detailed in the bulk of Circular 230.

There have been two bills, one each in the House and Senate, that would apply many of the stricter rules of Circular 230 to *all* “unenrolled” tax preparers (anyone who cannot represent a taxpayer before the IRS). These bills were introduced, but have yet to make it out of committee.

The new Administration is taking a different approach. The Commissioner of the IRS has taken up the gauntlet to develop a strategy and plan—*by year's end*—to “rein in the wayward tax preparer community” with an anticipated implementation for the 2010 return season. No one knows what the recommendations will be, but there seems to be a general consensus that they will include at least the following:

- Some level of testing to ensure a basic level of competence in preparing tax returns. The tests may be by type of return (i.e., individual, business, trust, etc.), and there may be grandfathering provisions for those who meet certain experience criteria.
- Annual continuing education requirements to maintain and improve competency.
- Additional regulations, requirements, and either new penalties or increased fines for existing penalties. My sense is that these will be structured to support the ongoing movement of what have traditionally been IRS accuracy, audit, and compliance functions out to the tax preparer community. We saw the start of this with the new §6694.
- Required e-filing at the Federal level for all paid preparers.

### Ridding the Country of Bad Preparers

This last point is critical because it is the key to how the IRS will close the door on “bad” tax preparers.

The IRS still uses a 1960's batch system to handle tax return processing. They have been upgrading their systems with a new project called the modernized e-file for the last several years, with the biggest and final step (1040 returns) being implemented over the next three years.

While this will clearly lower costs and improve efficiency at the IRS, how will this allow them to shut the door on bad preparers?

In the current batch system, the IRS doesn't know what they have until the return's data is captured and posted in the batch system. Then all the data is posted and stored in the taxpayer account. This can take weeks or months after the return was received. Any action against the preparer taken at this point is like closing the barn door after the horses have left.

Based on conversations at NATP's National Conference this past July, my personal speculation is that the IRS strategy probably contains at least some derivation of the following:

- An educational program and/or campaign so that taxpayers know that if they paid to have their return prepared it must be e-filed. If not, *the taxpayer will be fined*, along with the preparer.
- All tax returns prepared using software will be able (required?) to be filed electronically. Any “typed” (i.e., software prepared) returns submitted by paper will receive additional scrutiny.
- Tax software will have unique purchaser and licensing identifiers that will be included in e-file submissions. Returns submitted contrary to the software license, such as multiple “self-prepared” returns from a one-time-use package will generate an immediate IRS response—either a call to the taxpayer or return preparer, or just a rejection of the e-filed return with an appropriate IRS call-me notice to the taxpayer and/or preparer.
- Because the IRS will be able to process returns in real time, they'll be able to immediately shut down e-file submissions from barred preparers and/or suspicious sources during the current tax season.
- We know that the IRS has a highly sophisticated statistical model for analyzing tax returns and identifying and ranking returns for audit. Since the new system is database oriented, it will now be just as easy to analyze tax preparer data. It's probably reasonable to assume that a similar statistical analysis of tax preparers will be developed to identify preparers warranting additional scrutiny.

For example, it may look suspicious if 50 percent of a tax preparer's clients have a home office or Form 2106 deductions. Or, if the IRS audits a preparer and finds “bad” preparer actions, they could quickly and easily look at all of the returns prepared by that individual for similar “bad” actions.

Over time, it's not unrealistic to expect some preparer return analysis to be occurring as returns are e-filed.

While this may sound a little like Orwell's *1984*, I do think it's critical that the bad preparers be closed out of the market. Here's why:

- They steal business from you by offering “guaranteed” refunds so taxpayers are encouraged to shop for the largest refund, not the most accurate return.
- Bad preparers are also taking money out of your pocket by driving prices down.
- Every fraudulent return preparer who makes the news diminishes you and your integrity in the eyes of the taxpayer public.
- Nina Olsen, the taxpayer advocate, and Congress, use these fraudulent preparers as a public whipping post to paint *all paid preparers* as people who prey on taxpayers—overcharging them, under-servicing them, and defrauding both the taxpayer and the government. In addition to diminishing your personal and professional stature in the community, this has resulted in:
  - (1) The implementation of the “free” e-file system that has the government in competition with you to prepare tax returns and in collusion with the major players to direct taxpayers to specific service providers. One wonders how many of these returns actually end up being free.
  - (2) An opinion held by many in Congress that the country would be better off if the government just prepared everyone’s tax return since they already receive all the necessary data.
  - (3) All preparers being burdened with onerous new rules, regulations, and penalties implemented to put the “bad” preparers out of business.

Unfortunately the “bad” preparers have already demonstrated they are not moved to follow the rules or regulations, so these changes only impact the preparers trying to do the right thing.

Tax laws are complex and getting more complex each year. It takes time to become proficient in understanding these laws and even more time to properly apply them to get the best result for the taxpayer. As professionals we should be properly compensated for our significant expertise and the time spent preparing the tax return.

However, the bad preparers and refund shops don’t care about the tax law; they just plug in numbers to achieve the desired result. Since there is no thought required to just slapping some numbers down on a page, they can prepare a lot more returns in less time. If their productivity is artificially high, their fees can be artificially low. But they still receive the same total compensation. These preparers also frequently receive additional compensation on each return because of RAL fees. These artificially low prices push all of our prices down. So, what’s a tax professional to do?

- Make your voice heard. Get more involved in NATP both in your state and nationally. NATP is by far the largest organization representing tax professionals and it is the *only* organization that represents all tax preparers—enrolled agents, CPAs, attorneys, *and* unenrolled preparers. Get your colleagues

to join. The larger our membership, the more clearly we will be heard in Washington.

- Prepare yourself. Since it looks like everyone will need continuing education in the near future, start now. Visit [www.natptax.com](http://www.natptax.com) and click on “Education” for a list of courses offered by NATP. They offer a variety of live workshops, webinars, self-study, and online courses.
- Worry a bit. Citing “national interests” during the current financial crisis, the administration has established a majority ownership stake in a few major U.S. corporations, and asserted and implemented the authority to dictate internal operational policies in both the manufacturing and financial services industries. Given the funding requirements for all of the new government programs and bailouts, coupled with the reduced revenue from a declining economy, the deficit is growing exponentially. How hard do you think it would be for the administration to use the deficit and tax gap to assert a similar national need and take over the tax return preparation business? ♦

*Ken Dowdall has been a member of NATP since 1998 and has been a member of the Florida Board since May of 2000, where he has held positions as Secretary, Vice President, and President. At the 2007 Conference he was elected to a position on the NATP Chapter Advisory Counsel (now defunct).*

*Educated at the University of Pennsylvania where he received two Bachelors and a Masters degree simultaneously, Ken began his career at Citibank in back-office operations. Over the next 17 years, and three relocations later, Ken found himself in Florida as the Director of Technology at Citibank Federal Savings Bank where he was in charge of designing and implementing technological based innovations to reduce costs and improve the Bank’s service levels.*

*When it came time for the next relocation, Ken and his family were too settled to make the move. In 1990 Ken left Citibank and started Imagineering Solutions, a consulting company focused on the use of image technology to eliminate paper-based processes within organizations and provide increased control and automation of these functions.*

*To reduce the travel demands of his consulting practice, and so he could spend more real time with his family, in 1998 Ken joined his father’s tax practice. In 1999 his father retired and Ken and his wife Donna continue to run the practice together.*

*Ken is currently serving as an elder at the First Presbyterian Church of Margate/Coral Springs where he also teaches the Dave Ramsey Financial Peace class.*



Are you ready?