



NATIONAL ASSOCIATION OF TAX PROFESSIONALS

Comments Regarding Farm Program Payment Limitation and Payment Eligibility for 2009 and Subsequent Crop, Program, or Fiscal Years, Specifically Reg. Sec. 1400.502(a)(1)

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Paul C. Cinquemani, Director
Government Relations
National Association of Tax Professionals
P.O. Box 8002
Appleton, Wisconsin 54912-8002
Ph. 920.749.1040
FAX 902.749.1047
pcinquemani@natptax.com

NATP * P.O. Box 8002 * Appleton, Wisconsin 54912 * 800.558.3402

Background

The National Association of Tax Professionals (NATP) is a nonprofit professional association that is committed to the accurate administration and application of tax laws and regulations by providing education, research, and information to all tax professionals. For 30 years, NATP has existed to serve professionals who work in all areas of tax practice.

NATP's 19,200 members and 36 Chapters include individual practitioners, enrolled agents, certified public accountants, accountants, attorneys, and certified financial planners. These members own or work in firms that prepare more than 11 million tax returns annually on behalf of individuals and other entities. NATP serves these members by providing over 200 education offerings in more than 95 cities throughout the United States, a service unmatched by any other national tax association.

Purpose

NATP is providing comments specifically regarding the implication of the proposed regulations under 7 CFR Part 1400 as it applies to the 2008 Farm Bill and the compliance and enforcement of average adjusted gross income tests for qualification of commodity program benefits as administered under this part by the Commodity Credit Corporation (CCC). Persons or entities are not permitted to receive certain specific payments if their average adjusted gross income (AGI) from nonfarm sources exceeds \$500,000 or if AGI from farming, ranching and forestry operations exceed \$750,000, in addition to other AGI limits for other circumstances. The Farm Bill of 2008 amended these limits and the manner in which they are administered. The Bill requires the provision of new and additional information to verify compliance and unnecessarily increases the burden and cost to farm persons and entities ("Producers") by restricting the definition of persons able to provide the required certifications. NATP recommends broadening the field of qualified individuals permitted to provide this service.

Issue

Regulation Section 1400.502(a) states that a person or legal entity, including all interest holders in a legal entity, general partnership, or joint venture, must annually provide specified certifications, relevant IRS documents and supporting documents as requested by the CCC to comply with the average AGI limitation. In addition, an authorization for CCC to obtain tax data from the IRS for purposes of verification of compliance must be given. Regulation Section 1400.502(a)(1) specifically states that only a certified public accountant (CPA) or an attorney may certify in the manner prescribed by the CCC that the average adjusted gross income of the person or legal entity does not exceed the applicable limitation.

NATP appreciates the care and prudence with which the CCC is approaching the oversight and qualification of only those persons and entities that meet all eligibility requirements for program payments and benefits. We have a great regard for the qualifications and capabilities of CPAs and attorneys as individuals to assist in providing this service. We have a great many of them in our membership.

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We note that the task or service requires, among other things, that the AGI of participating applicants be appropriately determined and then measured against the maximum dollar amounts established by the 2008 Farm Bill. We also note that only CPAs and attorneys have been defined as those who may provide this service. NATP believes that there are other tax professionals that are also qualified to provide this service. By assuring the adequate supply of qualified individuals to provide the required certification of AGI in accordance with the applicable limitation, the CCC would mitigate the unnecessary burden and cost to producers of complying with the new provisions of the 2008 Farm Bill, as discussed below.

Part 10 of Title 31 of the U.S.C., Section 330 (a) (1) and the regulations there under regulate the conduct of CPAs, attorneys and enrolled agents (EAs) in regards to their practice before the Internal Revenue Service (IRS). These regulations under section 330 are commonly referred to as Circular 230. EAs are a “creation” of the Treasury Department and have a history going back to the Civil War. They are the only tax return preparers tested and sanctioned by the Treasury/IRS to represent all taxpayers before the IRS. They also understand the concept of what is includable in AGI as well as other significant complexities that comprise the United States Tax Code. They are also perfectly well-qualified to provide the certification prescribed by the CCC in §1400.502(a)(1). NATP recommends that, at a minimum, EAs also be included in that regulation section.

A significant portion of NATP’s tax professional members are “unenrolled” or “non-credentialed” tax return preparers as those terms are defined by the IRS. The IRS term signifies anyone who is not an attorney, CPA, EA, appraiser, or actuary. That leaves out a great many professionals that prepare tax returns. Be careful not to assume or be persuaded that non-credentialed preparers are uneducated or unscrupulous. That simply is not true. Seventy-seven percent (77%) of our non-Circular 230 members hold degrees beyond high school. There are a number that have Master’s Degrees in Taxation and some with Doctorates. Whether one has an advanced degree, been admitted to the bar, holds a CPA license or an EA designation from the IRS, one has had to pass an examination or a series of tests. An initial competency examination demonstrates an individual’s minimum competency level for entry at the point in time of the exam. It does not ensure the maintenance of that competency level nor does it ensure raising the bar from that level. Continuing professional education and experience does ensure the maintenance and growth of competency. It goes beyond the statement that one has met the minimum requirements to be proficient in the industry. It’s a measure of what the professional does on an ongoing basis to maintain and improve those skills. It provides evidence that the professional is keeping up with rule changes and the dynamics of taxation so that he/she can do the job well for the American public.

According to the Internal Revenue Manual, penalties are the IRS’ key tools against noncompliant preparers. All paid preparers are subject to IRS penalties and the regulations intended to implement them. All paid tax return preparers are subject to these, not just Circular 230 preparers. What penalties would those be? They vary in Code Sections 6694, 6695, 6701, 6713, 7206, 7207, 7216 and 7407 from penalties as light as \$50 per failure to provide a copy of a return to a taxpayer, to \$100,000, 3 years imprisonment, or both for willful preparation of a false or fraudulent return or other document. The IRS already has significant ammunition to regulate all tax return preparers and it has used that ammunition to ferret out the unscrupulous and incompetent. Congress continues to legislate additional means for the IRS to ensure the accuracy, compliance and competence of the nation’s paid tax return preparers.

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As noted, an individual may have a college degree in accounting and not be considered a “Circular 230” credentialed preparer. An individual may even have a Masters Degree in Taxation and not be considered “credentialed” by the IRS. NATP has a significant membership of such individuals who do not care to represent clients before the IRS. They just want to prepare tax returns. They are very qualified preparers and a large portion of them prepare farm income tax returns. They also understand the concept of what is includable in AGI. They also understand, interpret and implement the vast complex laws, regulations and pronouncements of the Treasury and IRS in order to accurately prepare and file tax returns. They are also perfectly well-qualified to provide the certification prescribed by the CCC in §1400.502(a)(1). NATP recommends that such tax return preparers also be included in that regulation section.

Producers that participate in CCC-funded programs are typically located in rural areas. In a significant portion of this area in which such farms operate, it is a considerable distance to a town or center where a CPA or an attorney is likely to be practicing. There are widespread areas in the plains, Rocky Mountains and northern states for which this statement is critical as opposed to other rural areas. A great many producers in these areas do not use CPAs or attorneys to file their income tax returns. They use EAs and other qualified tax professionals. If producers cannot or do not want to provide their tax records or other business documents pursuant to their required disclosures under these new regulations, they are additionally burdened with the additional time and expense of locating, retaining and interacting with an attorney or CPA over some distance to provide a certification that their tax preparer is qualified to and could easily provide. This regulation also unfairly restricts business currently being provided by CPAs, attorneys, EAs and other tax professionals to just CPAs and attorneys. Acting on NATPs recommendations above will relieve the burden and additional cost of implementing the new rules established by the 2008 Farm Bill and still ensure that the oversight and qualification of only those persons and entities that meet all eligibility requirements for program payments and benefits under CCC-funded programs is done with precision and prudence.

The Taxpayer Advocate, the Commissioner of the Internal Revenue Service, and members of Congress have acknowledged that the tax practitioner community at large is honest, ethical, competent and conscientious. What a positive testament and endorsement of individuals that the CCC should consider to further augment and expand the definition of individuals who may be permitted to certify the AGI as so prescribed in §1400.502(a)(1).

NATP appreciates the opportunity to comment on these regulations. We trust that the remarks made herein will be helpful and used in the further revision and clarification of how 7 CFR 1400 and the new rules there under as established by the 2008 Farm Bill will be fairly and equitably administered.