



COMMENTS BEFORE THE IRS PUBLIC FORUM ON TAX RETURN PREPARER REVIEW

Panel 2: The View From the Tax Return Preparer Community

July 30, 2009

Organizational Environment

The National Association of Tax Professionals (NATP) is honored to speak on behalf of all tax professionals and to take part in this public forum. NATP appreciates the opportunity to participate in this panel discussion by providing the viewpoint of tax professionals regarding the regulation of the profession.

NATP is a unique association among others in the industry. It is the only organization that represents all tax professionals whether CPAs, attorneys, EAs, accountants, financial planners, franchisees or other participants in the industry. In some sense of the term, NATP represents a sampling of the entire 1.2 million practitioners recognized by the IRS. NATP lends significant influence to taxpayers' decisions about compliance through its educated membership of more than 19,000 tax professionals, and growing. Compliance is taught all along the spectrum of taxpayer/ tax professional relationships and experience from pre-filing considerations through the filing of a tax return and on to post-filing matters. Our membership is comprised roughly of half Circular 230 professionals and half non-Circular 230 professionals. Our records show that our non-Circular 230 members take continuing education courses at an amount that equals or exceeds that of Circular 230 professionals. Further, 85-90% of NATP's members have post-high school education. NATP is a "grassroots" organization formed in 1979 by tax professionals for tax professionals. Its founders envisioned a support organization that could provide education on the complex tax code, its regulations, and other pronouncements in laymen's language.

NATP is a nonprofit professional association that is committed to the integrity of the tax administration system and the application of tax laws and regulations by providing education, research, and information to tax professionals. For nearly 30 years, we have existed to serve professionals who work in all areas of tax practice. We provide 115,000 hours of continuing education credits to our members with over 300 tax education offerings in over 100 cities throughout the United States, a service unmatched by any other national tax association. In addition, our National headquarters in Appleton, Wisconsin and 36 Chapters serve the public through regular news releases, client brochures and newsletters, and a designated taxpayer website. Our Chapters provide significant member involvement in local and state communities.

Each member of NATP agrees to abide by our Code of Ethics and Standards of Professional Conduct. All violators and defendant cases are sent to a Board-appointed Ethics Panel for resolution. In addition to hearing and adjudicating complaints from taxpayers and other tax professionals, NATP reviews all Department of Justice releases and the IRS' published list of Practitioners Subject to Disciplinary Action for potential further references to its Ethics Panel. Memberships are suspended or terminated accordingly.

NATP's Mission is:

"...to be an invaluable, efficient partner for all tax professionals, working together to achieve business success in a competitive, changing environment through effective education, resources, industry updates, tax information, and other services pertinent to the tax profession."

Helping close the tax gap is an effort in keeping with NATP's mission to its membership and is a problem we would like to help solve.

Recommendations for the IRS to Improve Compliance and Reduce the Tax Gap

We do not feel the need here to dwell on the \$345 billion shortfall in the American taxpayers' remittance of its tax bill other than to point out that it is estimated. In a speech before the IRS Research Conference on July 8-9, 2009, former IRS Commissioner Lawrence B. Gibbs stated that he was never asked the following question about the tax gap: "If it's an estimate, is it high, low, or just about right?" He said he prepared for that question, even though no one ever asked it of him. He was prepared to answer: "It's difficult to say." While it may be difficult to say, there is no doubt that a tax gap does exist.

NATP is pleased that current budget proposals provide more funding to the IRS to develop the technology to provide more specific and timely information concerning where the tax gap occurs and what is causing it. That will ultimately enable tax professionals to address those causes and influence taxpayers accordingly.

It should go without saying that simplification of the tax law is the cornerstone of voluntary compliance. Stating that fact is nothing more than an irritant since the IRS cannot do anything about it other than to use its "pulpit" when addressing Congress about the tax gap. We feel compelled to at least mention it in the hopes that Congressional concern about the tax gap may lead to attempts at a solution to this problem. We know it's difficult for them as well because of all the national policy that continues to be run through the tax code: energy policy; transportation policy; economic stimulus; welfare; etc.

If you are going to truly affect the tax gap, then the profession needs to be looked at in its total context; pre-file (planning, opinions, advice), return filing, and post-file (refunds, carrybacks/carryovers, exam, etc.). The earlier you impact the return, the more you get for your investment.

Regulating tax professionals, most authorities agree, would make a contribution toward reducing the tax gap. NATP surveyed its membership and found most of them agreed with this

concept. Most models of regulation seem to follow a process of registration, testing, licensing, educating, monitoring, and sanctioning. NATP sees the wisdom of this with some variance. We refer to the approach to growth in the profession as progressive, using the five “Es:” examination, experience, education, ethics, and enforcement.

We believe that an examination, whether it’s the CPA exam, the state bar, or the Special Enrollment Examination, is nothing more than a demonstration that someone has acquired minimum knowledge to enter the field. That someone passes one or more of these examinations says nothing about their competence in three, five, or ten or more years’ time. It states nothing about their morality or ethics either. Professionalism is an ongoing pursuit forged from experience, education, and consequent ethics. Driving professionals along that path, ever farther, will reduce the tax gap.

Caution should be taken in the undertaking of this regulation so as not to precipitate a fallout of professionals who make a significant contribution to the tax administration system and its current enjoyment of compliance. NATP recommends a transition from being unregistered to becoming registered or licensed. There should be a reasonable phase-in period to allow current non-Circular 230 preparers to become registered before they are prohibited from preparing returns. To move too quickly has the potential to negatively affect the livelihood of thousands of small business owners and their employees who provide credible and reasonably priced service to millions of taxpayers who depend on them. It also has the potential to seriously and negatively impact the ability of the tax administration system if significant numbers of competent and legitimate tax return preparers currently servicing that system close their doors.

A successful program will first focus on “getting its arms around” all the preparers before any of them leave or “go underground.” NATP therefore recommends that a simple registration process be initiated first. As an incentive or encouragement to get preparers to register, those that come forward or who belong to a professional association could be granted a “waiver” period wherein they would not have to take a test. If, after a designated period during which they obtained CPE, they experienced no “problems” with returns they’ve prepared, testing may be permanently waived. Alternatively, preparers could be subject to testing at any point after they have demonstrated incompetence.

Tax professionals are gatekeepers for tax administration and taxpayer compliance. If it were not for them, the government would not enjoy its current rate of compliance. NATP, and other similar professional associations, are gatekeepers for tax professionals. It stands to reason that those who belong to tax professional associations do so for support in their industry in order that they may be more proficient at their craft. It also stands to reason that those who belong to tax professional associations are more proficient, competent, and ethical than those “unaffiliated” with any professional organization. Indeed, there are exceptions to both rules. There are those who belong to professional organizations who are not current, not competent, and not ethical. But they are the exception as has been recognized by Congress, the Treasury, and the IRS, and so stated in public statements. There are also those who do not belong to professional organizations (“Unaffiliated”) who are current in tax knowledge, competent, and ethical. They, also, are the exception. It would seem that an adjunct, in regulating all tax professionals and raising the bar on their competence, compliance and ethics, would be to encourage them to join tax professional organizations. One way to do that, in the process of regulating them, would be to provide an incentive. Such an incentive could be to temporarily waive an exam requirement, as noted in the paragraph above, if a preparer belonged to a professional association for more than a specified period of time.

NATP believes the administration of an ethics and competence examination, where required, should reflect the realities of the tax preparation industry. Testing needs to be flexible because many professionals specialize. Some do individual returns only (94 percent of all income tax returns are individual returns). Some do fiduciary returns only. Some prepare all returns. Some do representation. An over-ambitious testing process, requiring knowledge in all facets of taxation would only be burdensome. It would increase costs to taxpayers and significantly reduce the number of otherwise competent and legitimate tax return preparers currently servicing the tax administration system. Such a requirement would be counter-productive.

The recently redesigned Special Enrollment Examination (SEE) demonstrates that it's possible to segment licensing into those who just want to do individual returns and those that want to do more. 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 competence level nor does it ensure raising the bar from that level. Continuing Professional Education and experience does ensure the ongoing maintenance and growth of competence. 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 taxpayers.

Flexibility in the testing of preparers should extend to the realities of how tax knowledge is obtained and utilized to determine the correct result. Any test should be "open-book" so preparers can demonstrate that they know where and how to find the right answers to tax problems and situations. They shouldn't be required to memorize the Code. That is an unrealistic and unnecessary barrier, considering there have been more than 16,000 amendments (with more coming) to the Code since 1986. An ethics and competence examination should be administered to all identified "problem preparers." It should also be re-administered if preparers who initially passed the exam subsequently demonstrate a pattern of errors or problems in the returns they prepare.

NATP believes that a commitment to continuing education is a great indicator of the tax professional's wisdom and competence. Anyone who practices in the field of taxation that is worthy of a client's trust knows from experience that you can never get too much technical education. At a minimum we suggest an annual CPE requirement of 24 hours.

Professionals should be required to pay for their education from whatever source to satisfy this requirement. They should be required to maintain records of completing this education and be prepared to show evidence thereof at any time to the regulators. We believe that monitoring this would not entail anymore activity than what OPR currently performs in the monitoring of Circular 230 professionals, aside from adding staff to meet the additional workload. The monitoring system should already be in place.

Some Closing Questions

Regulating the tax profession, though helpful in addressing the tax gap and reducing it, is not as simple as it may seem. Aside from the will and the resources to get it done, there are many unresolved questions that will affect its fairness, efficiency and workability. Here are a few:

- What is a tax professional for purposes of regulation? Which professional affects the tax return in a manner that an examination will detect and/or deter: the adviser who gives direction on how an item should be treated on a tax return, but does not prepare it; an attorney giving an opinion on a transaction that an accountant records in the books that are used by a third party to prepare a tax return; the financial planner who puts a taxpayer into an investment vehicle that is subsequently challenged as to its taxability or who otherwise advises a taxpayer on the timing of his transactions for tax purposes; the software vendor who develops the questions and consequential automatic treatment of items and the preparation of a return; the ERO who simply transmits the return to the IRS; the professor who teaches tax topics to students and is thereafter sought for advice?
- The above begs the question: What is an “examination” for these regulatory purposes? Is it for the purpose of letting people into the profession or keeping them out? Is it for the purpose of determining what appropriate entry level competence is necessary to prepare returns or is it for the purpose of determining cycle proficiency? If it’s to determine what appropriate entry level competence is necessary to prepare returns, what returns would those be? Just individual returns? Individual returns and related topics? All returns of every type? How does one prepare for an exam of proficiency?
- The above begs the next question: What are we trying to impact in this profession? Is it just return preparation? Or does the need for competence extend beyond that function? How much more goes into a return than just entering the right numbers on the right lines? How do proficiency and ethics relate?
- What are the effective indicators that a tax professional is competent, current, and honest? Shouldn’t more resources be put into technology, CADE, automated diagnostic tools that will help the IRS identify not only erroneous and/or fraudulent tax returns...but the preparers of those returns? Wouldn’t that make momentous strides toward closing the tax gap and cleaning up the aberrant professionals involved in advising and preparing such returns? This technology is currently in use by the NRP and was instrumental in catching the perpetrators of the Son of Boss tax scheme. Isn’t it time that e-file was mandated?
- It’s a known fact that part of the drive behind unethical and unscrupulous activities is from the taxpayer. If and when this activity is discovered, penalties are often waived for the taxpayer but not for the tax professional. Shouldn’t that playing field be leveled? If a taxpayer is ultimately responsible for what appears on his/her return, should he/she be held to the same standard? Would that contribute more to the care taken in selecting a tax professional? Likewise, when a tax professional takes a devious client, he runs the risk of likelihood for audit for all his clients. Shouldn’t professionals be better educated regarding such risks? Would that contribute more to the care taken in obtaining a client?

NATP truly appreciates the opportunity to be a part of this important discussion. We trust that our comments have been helpful as well as the questions we pose. We are willing to further assist or answer any other questions the IRS may have regarding this crucial issue.