



The AICPA Position on State-Level Oversight of Tax Preparers

Federal Overview

In 2010, the Internal Revenue Service announced a requirement that all paid tax preparers must obtain a Personal Tax Identification Number (PTIN) when filing Federal tax returns. This PTIN is a unique identifier, designed to ensure that tax preparers are meeting IRS requirements and that their work on behalf of clients can be appropriately monitored and regulated.

The launch of the PTIN was followed, in 2012, by a program to require all paid tax preparers (excluding lawyers, CPAs, and enrolled agents) to pass an exam and an on-going education requirement. In January 2013, the exam and education requirements were struck down by a U.S. District Court (*Loving v. IRS*) and that decision was later unanimously upheld by the Court of Appeals. The IRS has now launched a controversial voluntary program and some expect taxpayer advocates in Congress to introduce authorizing legislation to overturn the recent court decision. In the interim, however, the debate over how best to protect taxpayers continues. Concurrent with the federal debate, state level policymakers are also increasingly examining this issue to debate what additional safeguards may be appropriate to protect the public.

State Activity and the AICPA's Position on State Tax Preparer Regulation

There are currently 4 states which regulate individuals who prepare state-level tax returns (California, Maryland, New York, and Oregon).

The AICPA does not support an expansion of regulation at the state-level, as there are a number of issues and serious concerns with regard to the regulation of preparers at the state level.

The AICPA believes that there are other more effective ways to protect the public from unqualified and/or unscrupulous tax preparers, as outlined below.

Potential Concerns in regard to the Establishment of Additional State Tax Preparer Registries

- The Federal tax preparer registration program is currently in limbo; implementing additional state-based programs at this time may create conflicts and confusion for tax preparers and taxpayers, and it also presents additional risks to the CPA profession.
- In conjunction with the Federal program, state-based programs add an unnecessary layer of cost and regulatory burden for tax preparers and those expenses will be passed on to taxpayers.
- Bad actors are the most unlikely to participate in state based programs and may continue to harm the public.

- State-level continuing education and testing requirements will recreate extreme compliance challenges for tax preparers if different states and jurisdictions adopt conflicting, duplicative, and/or variable requirements, layered on to potential Federal requirements; this will not serve to protect the public and will impose undue burden on preparers.
- CPAs operating under states' interstate mobility laws could be required to register in multiple states if state tax preparer programs (especially ones covering out-of-state licensed preparers) are passed, undermining the success of the profession's highly successful CPA mobility campaign.
- State-based registries would be hard to enforce in a world in which much tax preparation is often done remotely and across state borders.
- Even if CPAs are exempt from registration, continuing education (CE), and testing requirements in proposed state legislation, state CPA societies will have to expend considerable time and resources to make sure that none of those exemptions are lost in the legislative process or over time.
- CPAs also may need to incur costs for their unlicensed supervised employees if they are not similarly exempted; these employees are already appropriately regulated, their work verified, and their supervisors and firms subject to the oversight of the state board of accountancy.
- If CPAs are excluded from a state-based program and its registry, then taxpayers may not know, when reviewing the registry, that CPAs offer tax services in the state. Out-of-state CPAs are at particular risk.
- The potential for marketplace confusion is immense. Will taxpayers know the differences between classes of preparers? Will the public's view of CPAs as pre-eminent providers of tax services be put at risk?

Complementary Monitoring of State Tax Preparers

The AICPA has always been a steadfast supporter of the goals of enhancing compliance and elevating ethical conduct. Ensuring that tax preparers are competent and ethical is critical to maintaining taxpayer confidence in our tax system. Indeed, these goals are consistent with AICPA's own Code of Conduct and enforceable tax ethical standards (Statements on Standards for Tax Services).

If state-level policymakers wish to enhance the monitoring of state tax preparers, the AICPA recommends that they leverage the existing IRS program rather than creating new ones. Such a program will protect taxpayers, strike the right balance between additional regulation and avoiding unnecessary, complicated, new regulations, and ensure better compliance with our state and federal tax laws.

To achieve this goal, the AICPA recommends that any proposed state-level program have the following components:

- Rather than creating a new duplicative set of registries in multiple states, preparers of state tax returns should place their federal PTIN on any state tax return. This will create a uniform way to consistently track and regulate tax preparers for any work they do in any tax jurisdiction. Fines should be established for state-level preparers who do not comply with this requirement.

- State departments of revenue should establish formal and regular communications channels with the IRS to share information about problems found in returns prepared by certain tax preparers. They should also set up a process to notify each other of any action taken against specific tax preparers.
- State departments of revenue should perform compliance audits on returns when there is sufficient evidence that a return has been improperly prepared. If returns associated with a particular PTIN are found to consistently have problems, the tax preparer should be contacted and asked to explain the questionable positions taken.
- State departments of revenue should be given the ability to bar non-CPA PTIN holders from filing returns in the state, if, after an appropriate due process, the PTIN holder is found not to be competent, ethical, and/or in compliance with state or Federal laws and requirements. Additionally, state departments of revenue should be authorized to impose fines on or require corrective/remedial action of non-CPA tax preparers. Questions in regard to returns prepared by CPAs should be referred to the state board of accountancy and the board of accountancy should take any appropriate action related to the licensee, including fines, remediation, or prohibitions on practice. The IRS and state taxing authority should be notified of any action taken against both non-CPAs and CPA PTIN holders in the state.

By implementing these simple and uniform changes, the AICPA believes that state departments of revenue can better protect taxpayers and enhance compliance, quality, and oversight. Such programs, should states wish to adopt them, will also avoid creating complicated bureaucracies that do not serve the public interest or protect taxpayers.