

**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
ORAL TESTIMONY OF
EDWARD KARL, VICE PRESIDENT-TAXATION**

**PUBLIC HEARING ON REG-139343-08, USER FEES RELATING TO
ENROLLMENT AND PREPARER IDENTIFICATION NUMBERS**

AUGUST 24, 2010

Good morning. I appreciate the opportunity to provide our comments on the proposed user fee regulations, imposing a \$50 cost annually on persons who are paid tax return preparers applying for a PTIN. Our comments today are not limited to solely addressing the proposed \$50 user fee. Instead our comments must be directed at the costs of the entire proposed regulatory regime that the IRS and Treasury seek to adopt, including those of PTIN registration, testing and continuing education. We strongly believe that the true costs of the regime should be considered in their totality, as that is how they will practically operate to place an immense new cost burden on CPAs and CPA firms, and in particular, the smallest CPA firms that will not be able to as easily absorb new costs.

The AICPA has always supported the Commissioner's general goals of enhancing compliance and elevating ethical conduct. We have supported registration and PTINs for all signing preparers, including CPAs, and application of Circular 230 to all preparers. But we are concerned about certain aspects of the IRS proposal, in particular the extension of the regulatory regime to non-CPA, non-signing employees of CPA firms. There are several reasons that the proposed regulatory regime should not extend to non-signing employees of CPA firms; we have elaborated on them in more detail in our written comments.

I have several questions I'd like to pose and discuss with you regarding the proposed program:

1. Does the IRS believe that CPAs and their employees are currently lacking in regulation such that the IRS needs to take drastic new regulatory action to fill the breach? CPAs and registered CPA firms are regulated by the state boards of accountancy. Licensed CPAs take the responsibility as signing preparers for the tax return, and supervise employees who contribute to the preparation of the return accordingly. Non-signing employees of CPA firms are indirectly regulated by the states through direct regulation of CPA licensees, as such individuals assume responsibility for the work of their employees. This builds an incentive for managing CPAs to adequately train and supervise staff contributing to the preparation of a return.

The four states that have adopted preparer registration programs have also answered this question in the negative – New York, California, Oregon and Maryland – all have exemptions for CPAs and their employees as long as the employee is working within the scope of employment and the supervising CPA signs the return.

2. Does the IRS believe non-signing employees of CPA firms who are CPA candidates are unprepared for their supporting role in the tax return preparation process such that they should be subject to the new proposed regulatory regime? In order to become a CPA, generally 150 hours of education is necessary – this is the equivalent of a bachelors and masters. An apprenticeship period is required before licensure. We have many new entrants into the profession that work full or part time while obtaining their

CPA license. During this time, these individuals are technically non-CPA, non-signing staff, and the proposed regime would extend to them. Licensed CPAs supervise and train these new entrants into the profession and take responsibility for their work – we do not think these individuals should be required to pay to take a competency test administered by the IRS as they prepare to sit for a rigorous four part CPA exam (which covers tax).

3. Does the IRS have evidence of systematic noncompliance problems at CPA firms? The original proposal issued in the Commissioner's Preparer Regulation report discussed studies conducted by GAO and TIGTA regarding un-enrolled tax return preparers. The study led the IRS to propose a paid tax return preparer registration regime that applied to signing preparers, including Circular 230 practitioners such as CPAs. The report reserved the issue of whether non-signing preparers would be included within the regime, and also said the IRS would study law and accounting firms. Where are the results of these IRS studies? We believe CPAs and CPA firms should be able to consider those results prior to the imposition of this vast new regulatory regime and the associated burdens.
4. How did the IRS arrive at its estimate of 900,000 to 1.2 million preparers? We question whether this number is a fair representation of the affected population given the breadth of the IRS proposed PTIN regulations' definition of paid tax return preparers. We read that definition, in particular the examples, to exclude only individuals who are purely clerical or purely data entry. Most CPA firms have very few employees with such limited responsibilities, and therefore the regulatory regime could apply to the majority of their employees, regardless of the fact that they train employees

to a level that is commensurate with their job responsibilities and take responsibility for their work through supervision by CPAs. The IRS will not be able to fairly calculate the burden without refining this number.

5. Does the IRS have a proposed estimate for how much it will cost a person to comply with all of the proposed regulatory requirements? The IRS has, so far, released one regulation imposing a \$50 fee associated with annual PTIN registration and has announced the associated vendor fee to be \$14.25; there is discussion in the regulation preamble for many other associated costs that remain unknown to the public, for example, the IRS user fee for examination, vendor fee for examination, IRS user fee for reporting or approving continuing education, vendor fee for reporting or approving continuing education, paid employee time studying for examination, paid employee time attending continuing education courses, continuing education course fees, travel and accommodation costs associated with attending continuing education, lost billable revenue for time spent studying for the exam or attending continuing education courses, and management time tracking compliance obligations of firm staff. IRS should consider the burden of its regime based on all of these costs.

6. How relevant is the proposed IRS competency examination requirement to CPA firms? It is commonly known that CPAs prepare the nation's most complex federal tax forms, and CPA firm staff assist in that process. Firms currently are training staff on many of the initiatives that the IRS and Congress are rolling out: completing Schedule UTP (uncertain tax positions), new FBAR and FATCA international reporting and withholding requirements, etc. Should firms stop training staff regarding these important

new initiatives such that they re-direct their training to preparation of Forms 1040 – including proper claiming of the Earned Income Tax Credit – even when their job responsibilities have NOTHING to do with preparation of such forms? CPA firms should not have to waste resources training their employees on issues that they need not know about in order to adequately, and professionally, complete their job responsibilities.

Also, CPA firms have employees contributing to various tax form series – international entity returns, estate tax returns or employee benefit returns, for example – will these individuals have to pay the IRS to take a test on the Form 1040 series? In our opinion this makes no sense. We believe requiring professionals to take a competency test that has zero nexus with their practice area is not the wisest expenditure of resources. These issues are, in part, why we suggested delaying the exam.

7. How will the IRS accomplish its specific goals identified in the regulation preamble -- namely tracking the number of returns each person prepares, and locating and reviewing returns prepared by a specific tax return preparer when instances of misconduct are detected -- with respect to non-signing staff of CPA firms? Currently, and most logically, the IRS has to rely on the existing enforcement mechanism – that is contacting the signers – in order to accomplish these goals as to non-signing staff. We do not understand why significant costs associated with these new requirements would be imposed when such new requirements do not help the IRS accomplish its goals. The IRS could enforce existing law to meet these goals without imposing the non-signing burdens.

8. The essential question boils down to this: can the imposition of the costs associated with the IRS planned PTIN, competency testing and continuing education requirements on non-CPA non-signing employees of CPA firms be justified by a cost / benefit analysis? Our rough estimates show this cost – to only the small CPA firms for their employees alone – to be at least \$390 million in first year costs for PTIN, testing and CE compliance. Based on our comments above, we do not believe these costs have a commensurate benefit to the government given the existing regulatory landscape. We would request that the IRS and Treasury slow down this process of adopting the entirety of its tax return preparer regulatory regime in order to get this right.

Again, thank you for the opportunity today. I am happy to respond to any questions you may have.