

August 31, 2009

The Honorable Douglas Shulman
Commissioner
Internal Revenue Service
CCPA:PD:PR (Notice 2009-60)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Notice 2009-60, Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance

Dear Commissioner Shulman:

The AICPA is pleased to provide these comments on Notice 2009-60, Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance. We provide these comments as a supplement to the statement of Michael P. Dolan, our IRS Practice and Procedures Committee Chair, before the Internal Revenue Service Public Forum on the Tax Return Preparer Review held on July 30, 2009.

In our July 30 statement, Mr. Dolan stated the AICPA: (1) supports the Commissioner's efforts to ensure that "all preparers are ethical, provide good service and are qualified;" and (2) concurs with the IRS strategic plan's recognition that tax professionals play a key role in sustaining our voluntary compliance tax system. Further, we stressed that the IRS already has sufficient authority to regulate federal tax return preparers without the need for new legislation through the current penalty structure, Circular 230, and implementation of one unique identification number for all preparers (and all other tax practitioners) to track all interactions with the Service. Our statement also strongly advised against imposing duplicative regulatory processes on CPAs, attorneys, enrolled agents, and the other professionals already subject to Circular 230.

We applaud your efforts in soliciting input from a broad range of stakeholders regarding the Service's review of issues concerning tax return preparers. In the spirit of your efforts in this area, we are providing the following responses to the questions posed by Notice 2009-60.

- 1. What types of individuals, entities, and professionals currently work as tax return preparers? How are their tax return preparation services currently monitored or regulated by professional organizations or the government? How could this monitoring and regulation be improved?**

CPAs practice in a variety of organizational forms including sole proprietorships, small

local or regional partnerships, large regional firms and large national and international firms. Our members enjoy the confidence of an extraordinarily broad and diverse client base – from individual taxpayers with uncomplicated 1040 returns to large publicly traded partnerships and the world’s largest multinational corporations. As a predicate to offering their professional tax return preparation services, CPAs must complete a specified course of academic study, pass a challenging multi-part examination including tax issues and professional ethics, and satisfy continuing professional education (CPE) requirements of the jurisdiction(s) in which they are licensed to practice. Furthermore, our members practice under the guidance, restrictions and disciplinary regimes defined in the AICPA Code of Professional Conduct, the AICPA Statements on Standards for Tax Services (SSTS), and in federal tax matters, Circular 230. In our view, CPAs are both sufficiently skilled and adequately overseen. Our members satisfy arduous educational, testing, licensing and CPE requirements of the CPA profession and they conduct their practices within the quality and ethical standards articulated by the Office of Professional Responsibility, state boards of accountancy, the AICPA and state CPA societies. As such, the overwhelming majority of CPAs serve the best interests of their clients as well as our voluntary compliance-based tax system, while those who fall short in those professional obligations are currently subject to serious Federal and state sanctions for non-compliance, including the potential for penalties, fines, and loss of professional licensure.

2. How do differences in regulation and oversight affect how the various groups of tax return preparers interact with the Service and taxpayers?

We believe that certified public accountants who offer federal tax services (and certain other tax practitioners including enrolled agents, and attorneys) are regulated under Circular 230. Through this oversight, CPA tax practitioners are subject to regulation and oversight both when they directly interact with the IRS and when they assist their clients – taxpayers – in interacting with the IRS. Examples of such interaction include tax return preparation, the IRS Practitioner Priority Service, IRS e-services, and representation of clients in connection with IRS examinations.

We believe all tax return preparers should be regulated under Circular 230; that is, all tax return preparers should be regulated and subject to the same sanctions. Circular 230 provides ethical and professional standards that protect the taxpayer when that taxpayer retains a tax return preparer who practices before the IRS to prepare his tax returns. These standards should apply not only to an enumerated category of Circular 230 practitioners, but to all tax return preparers.

3. Is there a minimum level of education and training necessary to provide tax return preparation services? If so, who should be responsible for ensuring that a tax return preparer meets this minimum level and how should that be done?

Section 56.02 of our Code of Professional Conduct provides that a CPA should not hold himself out to perform services that he is not competent or trained to perform. We

strongly support the incorporation of this notion of competency into the regulation of all tax return preparers. In this context, taxpayers expect and need tax return preparers who are able to provide preparation services for returns ranging from simple to very complex returns. Many individuals are able to prepare their own returns but choose to use a tax return preparer, even though their return could be considered simple. In those cases, the return preparer, particularly one with access to commercial return preparation software, may be sufficiently aware of the relevant tax rules by reading and understanding the instructions to the return. On the other hand, preparation of a complex individual or business return requires significant training and experience regarding the tax law provisions that govern the issues found in such returns. Thus, in our view, the education and training that should be expected of a preparer is return specific.

We believe that no set of rules for minimum education and training will meet the diverse needs of taxpayers and preparers. Instead, each preparer should be responsible for ensuring that he has the level of education and training necessary to competently perform the preparation job for which he is engaged.

4. What, if any, service and outreach should be provided to tax return preparers and taxpayers? Who should provide (and bear the costs for) these needed services?

As stated previously, it is the responsibility of the preparer to be conversant with the tax law governing the issues in returns he or she prepares. CPAs have access to specialized information through many resources, including the AICPA and state CPA societies of which they are members. The AICPA regularly provides Tax E-Alerts, news updates, practice guides and checklists, and professional publications (e.g., the Journal of Accountancy and the Tax Adviser) to its members.

There are a number of existing information outlets available to both preparers and taxpayers, ranging from IRS press releases to the websites of the AICPA and other professional organizations. Much of this information is free and readily available to any taxpayer or tax return preparer. The IRS and Treasury Department should maintain the primary responsibility for taxpayer and tax preparer outreach; funding should be provided through the budgetary process, including the authorization of appropriate funding levels for the Office of Professional Responsibility.

We believe a meaningful component of the IRS's budgetary authority should be used to release public service announcements on how taxpayers can identify the proper, competent tax return preparer. In general, we are comfortable with the current level of outreach the IRS provides the public and applaud the special efforts of the IRS during the busy months of the tax return filing season. Moreover, the Service should provide a broad range of resources to preparers to ensure that information deemed important to the effective administration of the tax laws is well disseminated.

5. **Should tax return preparers be subject to a code of ethics, and if so, what specific behavior should that code promote or prohibit? How would that code of ethics interact with existing ethical standards that may already be applicable?**

The AICPA has developed and approved the Statements on Standards for Tax Services Nos. 1-8. These enforceable tax practice standards are in many ways conceptually similar to the scope of the Circular 230 standards. An excellent example is Circular 230 section 10.21 (knowledge of client's omission) and our current SSTS No. 6 (knowledge of error: return preparation). While Circular 230 section 10.21 states that a practitioner "must advise the client promptly of the fact of such noncompliance;" SSTS No 6, paragraph 5 states that a "member should inform the taxpayer promptly upon becoming aware of an error on a previously filed return."

We strongly support the SSTS and Circular 230, and we view these sets of enforceable standards as providing meaningful guidance to CPAs in performing their professional responsibilities with respect to tax services. As stated earlier in this submission, we believe the public would benefit from making all tax return preparers subject to Circular 230 and oversight by the IRS Office of Professional Responsibility.

6. **What, if any, responsibility should the firms or businesses that employ tax return preparers have for the conduct of the individuals they employ?**

Ultimately it is the individual's responsibility to comply with professional and legal standards. However, firms that employ individuals to prepare federal tax returns should require that employees satisfy the professional and legal standards imposed on federal tax return preparers, including compliance with practice standards sufficiently high so as to avoid employee exposure to penalties under sections 6694 and 6695. Firms should be able to rely on certification or confirmation by the employee that he or she is in compliance with professional and legal standards and, if the employee is a licensed CPA or other licensed professional, that the individual is in good standing with the state licensing authority.

7. **What, if any responsibility should tax return preparer professional organizations have for the education, training, and conduct of their members?**

Similar to our response to the immediately preceding question, we believe ultimately it is the individual's responsibility to comply with professional and legal standards. Nevertheless, the AICPA strongly supports implementation of high professional standards for all tax practitioners. Our longstanding track record regarding high professional standards for CPAs includes the AICPA Code of Professional Conduct and our enforceable Statements on Standards for Tax Services. These standards provide meaningful guidance to CPA members in performing their professional responsibilities. Moreover, the AICPA is committed to member service and the public interest. Today, the CPA is viewed as a valued strategic partner and is considered an integral part of any individual, family, or organization's success. We prepare members to assume that role

by providing a broad array of continuing education programs, training, services, and publications CPAs need to keep their skills at the top professionally, and similar roles are played by state and local CPA societies throughout the United States.

8. If tax return preparation services should be regulated, what, if any, special regulatory provisions should be made for individuals who are already tax return preparers, licensed attorneys, certified public accountants, enrolled agents, or software providers?

Certified public accountants, attorneys, and enrolled agents who practice before the IRS are subject to the rules of Circular 230; and they are subject to a rigorous licensing examination to obtain their professional status. Upon achieving their professional designation, CPAs, attorneys, and enrolled agents are already subject to regulation and standards imposed upon them by state boards of accountancy, state bars, court systems, and Circular 230; and they generally are subject to annual continuing education requirements. These tax professionals incur significant costs in both obtaining and maintaining their professional status, including their ability to represent taxpayers before the IRS. We strongly advise against any result that would impose duplicative regimes on CPAs, attorneys, and enrolled agents.

9. What, if any, additional legislative, regulatory, or administrative rules should the Service consider recommending as part of its proposals with respect to the tax return preparer community?

The AICPA does not believe that any additional legislation or regulatory authority is required with respect to standards of practice for tax return preparers. Through the use of the current penalty regime combined with an expansion of the ability of the Office of Professional Responsibility to monitor currently unlicensed return preparers, the IRS has the authority necessary to regulate all federal tax return preparers.

The IRS adoption of a rule mandating the use of unique identification numbers assigned to all tax return preparers will allow the IRS to more readily identify those preparers that chose to practice outside the boundaries of the Internal Revenue Code.

The use of a unique identification number by each preparer must be accompanied by enforcement of preparer standards by the IRS. Unethical or negligent tax return preparers are subject to a broad range of penalties. Examples of these penalties include those for the understatement of tax liability (IRC 6694), the promotion of certain abusive tax shelters (IRC 6700), and the aiding and abetting of the understatement of tax liability (IRC 6701). Appropriate enforcement of these and other existing "preparer penalties" could be used to increase the ethics and quality of tax return preparers generally.

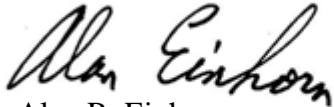
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We thank you for the opportunity to provide these additional comments on issues concerning tax return preparers. We would be pleased to further discuss the contents of these comments with you or your staff at any time. If you have any questions, please contact me at (202) 879-4966, or aeinhorn@deloitte.com; Danny R. Snow, Chair of the Federal Regulation of Tax Return Preparers Task Force, at (901) 685-5575, or dsnow@tdplc.com; or Benson S. Goldstein, AICPA Senior Technical Manager, at (202) 434-9279, or bgoldstein@aicpa.org.

Sincerely,

A handwritten signature in black ink that reads "Alan Einhorn". The signature is written in a cursive, flowing style.

Alan R. Einhorn

Chair, Tax Executive Committee