

CERTIFIED FINANCIAL PLANNER
BOARD OF STANDARDS, INC.

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April 26, 2010

CC:PA:LPD:PR (REG-134235-08)
Room 5205
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: Furnishing Identifying Number of Tax Return Preparer (REG-134235-08)

Ladies and Gentlemen:

Certified Financial Planner Board of Standards, Inc. (CFP Board) appreciates the opportunity to comment on the Internal Revenue Service (IRS) proposed regulation regarding assigning unique identifying numbers to tax return preparers.¹ In the release proposing the amendments (Proposing Release), the IRS indicated that requiring all tax return preparers to register and receive a preparer tax identification number (PTIN) is necessary to allow the IRS to identify tax return preparers and track the tax returns and refund claims associated with them. Given taxpayers' increased reliance on paid tax return preparers, ensuring consumers have access to competent and ethical tax return preparers is an important public policy initiative deserving of broad industry and public support. While CFP Board supports the IRS's efforts to register all paid tax return preparers, we have concerns regarding the proposed regulation, as well as the competency testing and continuing professional education (CPE) requirements the Proposing Release acknowledges are forthcoming.

Background on CFP Board

CFP Board is a non-profit organization that acts in the public interest by fostering professional standards in personal financial planning through setting and enforcing education, examination, experience, and ethics standards for financial planner professionals who hold the CFP® certification. Our mission is to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for personal financial planning. CFP Board currently regulates over 61,000 CFP® professionals who agree on a voluntary basis to comply with our competency and ethical standards and subject themselves to the disciplinary oversight of CFP Board.

Financial planning professionals provide services that integrate knowledge and practices across the financial services industry. Financial planners work with their clients to determine whether and how they can meet their life goals through the proper management of their financial resources. Financial planning typically covers investment, income tax, education, insurance, retirement, and estate planning.

¹ Furnishing Identifying Number of Tax Return Preparer, 75 Fed. Reg. 14,539 (proposed March 26, 2010) (to be codified at 26 C.F.R. pt. 1) [hereinafter Proposing Release].



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Certified Financial Planner Board of Standards Inc. owns these certification marks in the U.S., which it awards to individuals who successfully complete CFP Board's initial and ongoing certification requirements.

Tax Return Preparers Furnishing Identifying Numbers for Returns or Claims for Refund and Related Requirements

As we understand the proposed regulation, prior to December 31, 2010, all tax return preparers will be able to obtain a PTIN to be used on tax returns or claims for refund. However, after December 31, 2010, the only tax return preparers authorized to obtain a PTIN would be attorneys, certified public accountants (CPAs), enrolled agents, and registered tax return preparers authorized to practice before the IRS.² Should it be necessary in the interest of effective tax administration, the IRS would be permitted to provide exceptions from the requirements of the proposed regulation.³ CFP Board supports the IRS's efforts to enhance oversight of tax return preparers. In a survey of a random sample of CFP® professionals, CFP Board found that approximately 74% of CFP® professionals who prepare some portion of their clients' tax returns or claims for a refund of tax support the IRS's plans to enhance oversight of tax return preparers. However, we are concerned that the proposed regulation is inconsistent with the IRS's intent and would likely create classes of tax return preparers, thereby creating a disadvantage for those labeled solely as registered tax return preparers.

The proposed regulation, as written, fails to achieve the IRS's intent to refer to all tax return preparers with a PTIN as registered tax return preparers. We acknowledge the proposed regulation would require all tax return preparers to receive a PTIN. However, it does so in a manner that creates two classes of tax return preparers: (1) attorneys, CPAs, and enrolled agents; and (2) registered tax return preparers. Specifically, proposed § 1.1609-2(d) states that

Except as provided in paragraph (h) of this section, beginning after December 31, 2010, to obtain a preparer tax identification number or other prescribed identifying number, a tax return preparer must be an attorney, certified public accountant, enrolled agent, *or registered tax return preparer* authorized to practice before the Internal Revenue Service under 31 U.S.C. 330 and the regulations thereunder.⁴

Additionally, the Proposing Release supports this interpretation by stating:

The Report contemplates that only attorneys, certified public accountants, enrolled agents, *as well as tax return preparers who pass a minimum competency exam and meet other requirements (referred to as "registered tax return preparers")* will be eligible to prepare and sign tax returns and claims for refund. These proposed regulations do not establish the requirements to become a registered tax return preparer, which primarily will be set forth in future guidance⁵

The Proposing Release appears to differ from the intent expressed in the IRS's *Return Preparer Review* (the Report). The Report stated that the IRS would "require all individuals who prepare returns for

² Prop. Treas. Reg. § 1.6109-2(d).

³ *Id.* § 1.6109-2(h).

⁴ *Id.* § 1.6109-2(d) (emphasis added).

⁵ Proposing Release, 75 Fed. Reg. at 14,541 (emphasis added).

compensation and are required to sign those returns to register and obtain a preparer tax identification number.”⁶ We understand the intent of the Report to be that the IRS would have a population of registered tax return preparers, some of whom are attorneys, CPAs, or enrolled agents, who are eligible to obtain a PTIN and prepare tax returns or claims for a refund of tax. Within that population of registered tax return preparers, some would be required to satisfy competency testing and CPE requirements, but attorneys, CPAs, and enrolled agents would not.

This interpretation is further supported by the IRS’s authority to provide exceptions to the requirements of the proposed regulation.

The Internal Revenue Service, through forms, instructions, or other appropriate guidance, may prescribe exceptions to the requirements of this section, including the requirement that an individual be authorized to practice before the Internal Revenue Service before receiving a preparer tax identification number or other prescribed identifying number, as necessary in the interest of effective tax administration.⁷

The IRS and the Department of the Treasury recognize that it may take time to establish procedures (i.e., competency testing) for individuals who are not attorneys, CPAs, or enrolled agents to become registered tax return preparers.⁸ Because registered tax return preparers, as described in the proposed regulation, are not currently authorized to practice before the IRS, any delay may lead to a situation where only attorneys, CPAs, and enrolled agents can prepare tax returns after 2010, unless the IRS prescribes exceptions.

If the IRS’s intent is to register all tax return preparers in an equitable manner, it should avoid creating a separate group of registered tax return preparers that would not include attorneys, CPAs, and enrolled agents. Doing so could lead to there being two distinct classes of tax return preparers in the eyes of taxpayers, and provide attorneys, CPAs, and enrolled agents a marketing advantage over registered tax return preparers.

Further, this approach will likely complicate future regulations should the IRS determine that attorneys, CPAs, or enrolled agents should be subject to competency testing and CPE requirements.⁹ While registered tax return preparer is not specifically defined in this proposed regulation, the Proposing Release leaves the impression that it will be defined in future guidance as a tax return preparer who passes a minimum competency examination and meets other requirements, which would confuse matters should the IRS add or remove exceptions from the competency testing and CPE requirements.

⁶ Publication 4832, Return Preparer Review 33 (Rev. 12–2009) [hereinafter Return Preparer Review].

⁷ Prop. Treas. Reg. § 1.6109-2(h).

⁸ See Proposing Release, 75 Fed. Reg. at 14,542.

⁹ See Return Preparer Review at 34–35 (“The IRS is not proposing a competency testing program for attorneys, certified public accountants, or enrolled agents currently, but the IRS will consider expanding testing to those individuals if data is collected in the future that identifies a need for this testing.”); *id.* at 36 (“The IRS will consider requiring the completion of tax return preparer continuing professional education from [attorneys, CPAs, enrolled agents, enrolled actuaries, and enrolled retirement plan agents] if data is collected in the future that identifies a need for this educational requirement.”).

We suggest that the IRS take a different approach. The IRS should define registered tax return preparer as “any tax return preparer with a valid preparer tax identification number.”¹⁰ Proposed § 1.6109-2(d) should be revised to remove any reference to attorneys, CPAs, and enrolled agents. This would leave the IRS free, as it moves forward in establishing the requirements for obtaining and renewing a PTIN as a registered tax return preparer (i.e., competency testing and CPE requirements), to provide exceptions for attorneys, CPAs, enrolled agents, and other tax return preparers as it determines necessary in the interest of effective tax administration.

Competency Testing and Continuing Professional Education Requirements for Registered Tax Return Preparers

In regulations that are forthcoming, tax return preparers will be required to pass one or more competency examinations prior to receiving a PTIN, and fulfill certain CPE requirements following registration. Attorneys, CPAs, and enrolled agents will be exempt from the competency testing and CPE requirements. Further, all signing and nonsigning tax return preparers would be required to comply with the standard of ethics set forth in Treasury Department Circular 230. At this time, we have identified the following issues regarding the application of the IRS proposal to CFP[®] professionals:

Competency Testing: The IRS proposal to establish competency testing for tax return preparers would not apply to attorneys, CPAs, or enrolled agents. We agree with commenters who noted that additional “testing of those who had to pass examinations to obtain their professional credentials would be costly and redundant.”¹¹

We believe CFP[®] professionals, like attorneys, CPAs, and enrolled agents, should be exempt from the competency testing requirement. An individual who wishes to obtain the CFP[®] certification must pass a two-day, ten-hour examination designed to assess the examinee’s ability to apply financial planning knowledge to real-life financial planning situations. A significant portion of the CFP[®] Certification Examination covers income tax law and related tax subjects.¹² Requiring

¹⁰ Tax return preparer is defined in the Proposing Release as “any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax.” Prop. Treas. Reg. § 1.6109-2(a)(2)(ii). We recognize that there are concerns with how the IRS will interpret “all or substantially all,” but do not address that issue in our comment letter.

¹¹ Return Preparer Review at 34.

¹² The CFP[®] Certification Examination covers the following income tax law topics: income tax law fundamentals; tax compliance; income tax calculation; tax accounting; characteristics and income taxation of business entities; income taxation of trusts and estates; basis; depreciation and cost recovery concepts; tax consequences of like-kind exchanges; tax consequences of the disposition of property; alternative minimum tax; tax reduction and management techniques; passive activity and at-risk rules; tax implications of special circumstances; and charitable contributions and deductions. Additionally, the CFP[®] Certification Examination covers tax issues related to education planning, health insurance, disability income insurance, long-term care insurance, life insurance, employee stock options, non-qualified stock options, stock plans, non-qualified deferred compensation, investment planning, social security benefits, gifting strategies, gift tax compliance, estate tax compliance, the generation-skipping transfer tax, and income in respect of a decedent.

CFP[®] professionals to pass a competency examination in order to register with the IRS and receive a PTIN would, as with attorneys, CPAs, and enrolled agents, be costly and redundant.

Continuing Professional Education: The IRS proposal would require tax return preparers to complete fifteen hours of CPE annually, including federal tax law updates, ethics, and general federal tax law topics. We agree that “[c]ontinuing professional education requirements serve to encourage professionals to remain current and to expand their knowledge within their field of expertise.”¹³ Attorneys, CPAs, enrolled agents, enrolled actuaries, and enrolled retirement plan agents will be exempt from the CPE requirements because they must complete CPE to retain their professional credentials.

We believe CFP[®] professionals similarly should be exempt from the CPE requirements. Each CFP[®] professional is required to complete thirty hours of CPE every two years—two hours on ethics and twenty-eight hours from one or more accepted subject topics. CFP Board currently registers CPE sponsors that provide courses on income tax planning topics, including income tax law fundamentals, tax compliance, tax accounting, income taxation of business entities, alternative minimum tax, tax reduction techniques, and charitable contributions. Like the competency examination, requiring CFP[®] professionals to complete additional CPE would be costly and redundant.

We look forward to the opportunity to respond to future guidance on the competency testing and CPE requirements for registered tax return preparers, and hope the IRS considers providing CFP[®] professionals with the same exceptions afforded attorneys, CPAs, and enrolled agents.

Conclusion

CFP Board appreciates the opportunity to comment on the proposed regulation regarding assigning unique identifying numbers to tax return preparers. If you should have any questions regarding CFP Board, the financial planners it certifies, or the CFP[®] marks, please contact Marilyn Mohrman-Gillis, Managing Director of Public Policy and Communications, at 202-379-2235, or visit CFP Board’s Web site at www.CFP.net.

Sincerely,



Kevin R. Keller, CAE
Chief Executive Officer

¹³ Return Preparer Review at 34.