

## **IRS Public Forum on Tax Return Preparer Review**

**Statement of James H. Nolen, on behalf of the National Society of Accountants**

**July 30, 2009**

Thank you for this opportunity to participate in this Forum and share our views regarding the possible regulation of federal income tax preparers. My name is James H. Nolen. I am the President of the National Society of Accountants (“NSA”). I am the owner of Nolen’s Accounting and Tax Service in Oklahoma City and have provided accounting and tax services to individuals and small business clients for over 30 years.

I am here today in my capacity as President of the National Society of Accountants, a voluntary association of certified public accountants, enrolled agents, licensed public accountants, other licensees of state Boards of Accountancy, tax practitioners who are licensed by state agencies, and accountants and tax practitioners who hold credentials from a nationally recognized credentialing body. Many of these members are not currently subject to direct regulation by the Internal Revenue Service. NSA and its affiliated state organizations represent approximately 30,000 practitioners who provide accounting, advisory and tax related services to more than 19 million individuals and small businesses. In short, NSA represents accountants and tax professionals who serve *Main Street* rather than *Wall Street*.

The members of NSA, as well as members of other professional societies have long recognized that, if you are going to hold yourself out as a professional in the tax field, it takes substantial preparation. Given that a client’s financial well being is sometimes at stake, it is not unfair to have minimum standards or to require a test. In fact, NSA’s Bylaw’s require a professional credential as a condition of continuing membership.

### **Registration of Tax Preparers**

Because of a tax preparer’s intimate and detailed knowledge of a client’s financial situation, and the ability to impact that financial situation through tax return preparation

and filing, NSA has long supported registration of tax preparers. Registration would provide a means of allowing current and potential clients to know that the preparer meets whatever minimum standards are set to be qualified as a professional preparer.

### **Testing**

One of the minimum standards should be successfully passing a qualifying examination to test basic knowledge any paid preparer should know. If a barber or a beautician needs pass a competency examination, then a tax preparer should as well, given that a poor effort by the preparer can have substantially worse effects on the client than a bad haircut.

There are a number of practitioners, however, who have earned a waiver of the examination requirement. These are tax practitioners who have already demonstrated their competence by passing a valid examination. For example, NSA recognized in the early 1970s that some preparers had no test available to them if they did not want to become an enrolled agent, CPA or attorney. As a result, NSA formed the Accreditation Council for Accountancy and Taxation to offer tax credentials. ACAT's examinations are administered by a subsidiary of the National Association of Boards of Accountancy, the same group that administers the CPA examination. ACAT's examinations are psychometrically validated and are certified by the National Organization of Credentialing Agencies. I am sure that other organizations may have developed valid examinations as well. We believe it appropriate that an examination waiver of the examination requirement be provided for to any practitioner that passes or has passed an ACAT examination. Of course, the IRS should have the right to audit these examinations to ensure they meet whatever objective standards are set.

Similarly, examination waivers should be granted any individual holding a license from a state Board of Accountancy. These practitioners have likewise demonstrated a level of competence that is based on a long-established regulatory standard that has education, experience, ethics and examination as required components. Every state accountancy

regulatory scheme requires continuing professional education as a condition for license renewal.

The states of California and Oregon already license tax preparers in their respective jurisdictions. The licensing qualifications differ slightly in each state, but both require a substantial educational element, including state and federal taxation and ethical conduct, as a prerequisite to granting a license. In both states, continuing professional education is a requirement for license renewals. California currently licenses approximately 36,000 tax preparers and Oregon licenses approximately 8,000 preparers under their respective programs. These states already impose adequate and efficient licensing requirements on their tax and accounting professionals. We do not believe additional federal testing requirements should be imposed on these individuals or similarly situated individuals in other states.

Finally, the Office of Professional Responsibility of the IRS has extended Circular 230 privileges to public accountants in a number of states. These licensed public accountants, like their CPA counterparts, are subject to regulation and supervision by state Boards of Accountancy and must meet continuing education, professional standards and other requirements in order to maintain their practice rights. We firmly believe that if the Internal Revenue Service has already recognized the competence and integrity of these tax and accounting professionals in these states, no additional federal requirements should be necessary. Any individual granted an examination waiver would still be required to register, pay the appropriate fees and meet any other non-testing other requirements.

### **Continuing Education**

We support a requirement for continuing education to ensure continuing competence with respect to basic tax knowledge, especially given our ever changing tax code. All of the education recognized by NSA for CPE purposes must meet the standards established by NASBA. This is the same standard recognized for purposes of maintaining the CPA license and ensures the education taken is of sufficient professional quality. We

recommend that any education required for tax preparers should also meet minimum professional standards.

### **Implementation**

NSA believes that an orderly, phased implementation of registration and/or testing over a two or three year period is mandatory. A shorter time period is likely to unnecessarily disrupt the filing process. Further, as part of this implementation, the tax preparer who initially filed a return should be allowed to continue to participate in the disposition of that return until it is accepted and closed by the IRS, even if that is a multi-year process, and even if any new tax preparer rules are made final during this period.

### **Administration**

We support the establishment of an "administrative entity" to oversee tax preparers and ensure that any fees paid by preparers are used for regulation and to educate consumers. NSA has been dismayed that a number of states are considering imposing fees on tax preparers merely as a means of enhancing state budgets. This does nothing to address competence and does nothing to educate consumers about the financial perils or possible criminal penalties they may face if they engage the services of unscrupulous preparers.

### **Enforcement and Consumer Education**

Absent a robust consumer education program, we are concerned that those individuals who do not comply with current requirements will not comply with any new requirements, either. A key is to bring those individuals into the tax preparer system and the best way to do so is to ensure that they suffer significant financial harm if they willingly flout the law... Taxpayers must also be educated, by a number of means, to understand that a paid preparer must sign a return. It should also be possible to work with software developers to disable software if it is used more than a set number of returns. If we fail to bring these preparers into the system, we will merely be trying to increase compliance by the compliant and this effort will have missed its mark.

A minimum competency exam at the front-end along with registration, required continuing education and significant penalties for non-registrants coupled with aggressive enforcement by the Service is the pro-active path and the path NSA advocates.