

## ANNUAL FILING SEASON PROGRAM

Rev. Proc. 2014-42

### SECTION 1. PURPOSE

This revenue procedure provides guidance regarding a new, voluntary Annual Filing Season Program designed to encourage tax return preparers who are not attorneys, certified public accountants (CPAs), or enrolled agents (EAs) to complete continuing education courses for the purpose of increasing their knowledge of the law relevant to federal tax returns. In addition, this revenue procedure modifies and supersedes Revenue Procedure 81-38, 1981-2 C.B. 592, regarding limited practice before the IRS by individuals who are not attorneys, CPAs, or EAs.

### SECTION 2. BACKGROUND

The accuracy of tax return preparation is essential to effective tax administration. More than half of the United States' taxpayers rely on paid tax return preparers to assist them in preparing their federal tax returns annually. While 40% of paid tax return preparers are credentialed as attorneys, CPAs, or EAs, most of the other 60% of paid tax return preparers lack any kind of professional credential or license. Basic competency for paid tax return preparers is essential to accurate return preparation, improved tax compliance, effective tax administration, and protecting taxpayers from preparer errors.

To further these goals, in 2011 the Treasury Department and the IRS published

regulations under 31 U.S.C. § 330 (which are reprinted in Treasury Department Circular No. 230 (Circular 230)) that established registered tax return preparers (RTRPs) as a new category of practitioner and prohibited an individual who was not an attorney, CPA, EA, or RTRP from preparing tax returns for compensation. Circular 230 also set forth the requirements for RTRPs, which included passing a minimum competency examination and completing continuing education annually. Under these regulations, RTRPs were permitted to engage in limited practice by representing taxpayers before the IRS during an examination with respect to tax returns and claims for refund that the RTRP prepared and signed. At the same time, provisions in Circular 230 allowing any unenrolled or unlicensed tax return preparer to engage in limited practice by representing taxpayers during an examination of a return prepared and signed by the tax return preparer were removed.

In February 2014, the D.C. Circuit Court of Appeals in *Loving v. IRS*, 742 F.3d 1013 (D.C. Cir. 2014), held invalid the portion of Circular 230 regulating RTRPs as practitioners practicing before the IRS. Accordingly, the RTRP program is no longer in effect. In the Fiscal Year 2015 Budget, the Administration proposed that Congress provide the Treasury Department and the IRS with legislative authority to regulate tax return preparers. See General Explanations of the Administration's Fiscal Year 2015 Revenue Proposals. Until legislation is enacted, the Treasury Department and the IRS have established an Annual Filing Season Program designed to encourage tax return preparers who are not attorneys, CPAs, or EAs to improve their knowledge of federal tax law. An unenrolled tax return preparer who successfully completes continuing

education courses related to federal tax law will generally have a better understanding of the tax law necessary to represent a taxpayer before the IRS during an examination than an unenrolled individual who has not taken any continuing education courses related to federal tax law. Accordingly, this revenue procedure also modifies and supersedes Revenue Procedure 81-38, and in its place provides rules permitting unenrolled tax return preparers who have an Annual Filing Season Program Record of Completion to represent taxpayers during examination in certain limited circumstances.

### SECTION 3. SCOPE.

The Annual Filing Season Program described in this revenue procedure is voluntary and no tax return preparer is required to participate. Further, any individual may apply for and receive an Annual Filing Season Program Record of Completion if he or she meets the requirements of this revenue procedure.

This revenue procedure does not restrict any individual from preparing and signing tax returns and claims for refund nor does it change the requirement that paid tax return preparers must obtain a Preparer Tax Identification Number (PTIN). See Treas. Reg. § 1.6109-2.

An Annual Filing Season Program Record of Completion is not required for an attorney, CPA, EA, enrolled actuary, or enrolled retirement plan agent to represent taxpayers before the IRS as described in section 10.3 of Circular 230. This revenue procedure does not in any way affect or limit the ability of attorneys, CPAs, or EAs to represent taxpayers before the IRS. The rules governing the practice of such persons before the IRS are set forth in Circular 230.

## SECTION 4. ANNUAL FILING SEASON PROGRAM

.01 *In general.* An application for the Annual Filing Season Program must be made in accordance with this revenue procedure and the requirements set forth by the IRS in forms, instructions, or other appropriate guidance. An application for the Annual Filing Season Program will not be considered if the applicant does not comply with the requirements of this section.

.02 *Record of Completion.* Upon verification that the requirements in section 4 of this revenue procedure have been met, the IRS will issue a Record of Completion to the applicant. The Record of Completion is valid only with respect to tax returns or claims for refund prepared and signed during the calendar year for which the Record of Completion is issued.

.03 *Form of application.* Applicants must apply for the Annual Filing Season Program by using the online PTIN application system or on paper, using the IRS Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application and Renewal* (or successor form), as prescribed by the form's instructions. The applicant must sign the application under penalties of perjury and include any required supporting information and documentation required by forms, instructions, or other appropriate guidance. Applications must be received by April 15 of the year for which the Record of Completion is sought, and no applications received after that date will be considered.

.04 *Period of applicability.* The Record of Completion is effective for one calendar year. Once issued, the Record of Completion is effective for tax returns and claims for refund prepared and signed from the later of January 1 of the year covered by

the Record of Completion or the date the Record of Completion is issued until December 31 of that year. For example, if an application is submitted on February 15, 2015, and a Record of Completion is issued on February 25, 2015, the tax return preparer's 2015 Record of Completion will be effective for tax returns and claims for refund prepared and signed from February 25, 2015 through December 31, 2015.

*.05 Application requirements.*

- (1) *PTIN.* Applicants must be eligible for and obtain a PTIN, or timely renew their existing PTIN, in accordance with the requirements of Treas. Reg. § 1.6109-2. The PTIN must be valid for the year for which the Record of Completion is sought.
- (2) *Federal tax filing season refresher course.*
  - (a) *Requirement.* Only applicants who successfully complete an annual federal tax filing season refresher course (refresher course) that is administered by an IRS-approved continuing education provider (described in section 5 of this revenue procedure) are eligible to participate in the Annual Filing Season Program. The refresher course must generally cover tax law and filing requirements relevant to Form 1040 series returns and schedules. The refresher course must be 6 hours and must include a test of the material presented during the course that is given at the end of the course. The test must be a minimum of 100 questions. To successfully complete the refresher course, the applicant must pass the related test by answering 70% of the questions correctly (or a higher percentage if set forth in forms, instructions, or other appropriate guidance).
  - (b) *Exceptions.* The following applicants are not required to take the

refresher course as a condition of eligibility to apply for a Record of Completion:

- (i) Attorneys, CPAs, and EAs described in section 10.3 of Circular 230;
- (ii) Individuals who passed the RTRP examination; and
- (iii) Tax return preparers who are licensed or registered by any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia after passing an examination covering federal tax matters, and tax return preparers who have passed an examination covering federal tax matters administered by an entity recognized by the IRS as an eligible entity for purposes of this section. A list of states and other entities recognized by the IRS as offering an examination that qualifies for purposes of this exception will be posted on IRS.gov. Applicants who qualify for this exception must, upon request, present proof of their license, registration, or passage of an approved examination as required by the IRS in forms, instructions, or other appropriate guidance.

(3) *Continuing education.*

(a) *Applicants required to complete the refresher course.*

Applicants required to complete the refresher course must successfully complete 18 hours of continuing education from an IRS-approved continuing education provider (described in section 5 of this revenue procedure) during the calendar year prior to the year for which the Record of Completion is sought. The total hours completed must consist of 2 hours of ethics or professional responsibility, 10 hours of federal tax law topics, and 6 hours of federal tax law updates. For example, to receive a Record of

Completion that will be effective for tax returns and claims for refund prepared and signed during the 2016 calendar year, an applicant must have completed 18 hours of continuing education meeting the requirements of this section 4.05(3) during the 2015 calendar year. Applicants who successfully complete the refresher course described in section 4.05(2) will have satisfied the requirement to take 6 hours of federal tax law updates.

(b) *Applicants exempt from the refresher course.* Applicants exempt from the refresher course must successfully complete 15 hours of continuing education from an IRS-approved continuing education provider during the calendar year prior to the year for which the Record of Completion is sought. The total hours completed must consist of 2 hours of ethics or professional responsibility, 10 hours of federal tax law topics, and 3 hours of federal tax law updates.

(c) *Transition rule.* Applicants for the Annual Filing Season Program for the 2015 calendar year are required to complete 11 hours of continuing education during 2014. For applicants who must complete the refresher course, the refresher course will satisfy 6 hours of the 11-hour requirement; the other 5 hours must consist of 3 hours of federal tax law topics and 2 hours of ethics or professional responsibility. Applicants not required to take the refresher course must complete 8 hours of continuing education consisting of 3 hours of federal tax law updates, 3 hours of federal tax law topics, and 2 hours of ethics or professional responsibility.

(4) *Consent to be subject to duties and restrictions of Circular 230.* As a prerequisite to participation in the Annual Filing Season Program and receiving a

Record of Completion, an applicant must consent to be subject to the duties and restrictions relating to practice before the IRS in subpart B and section 10.51 of Circular 230 for the entire period covered by the Record of Completion.

*.06 Restrictions on eligibility.*

(1) *Ineligible individuals.* The following individuals are ineligible to participate in the Annual Filing Season Program:

(a) An individual who is disbarred, suspended, or disqualified from practice before the IRS under Circular 230, during the period for which the individual is disbarred, suspended, or disqualified.

(b) An individual who has been convicted of a felony involving a financial matter, tax matter, or other violation of the public trust within the 5-year period preceding the date of the application to participate in the Annual Filing Season Program.

(c) An individual who is enjoined from representing persons before the IRS, preparing tax returns, or engaging in other conduct subject to injunction under section 7407, for the time period during which the injunction is in effect.

(d) An individual who engaged in misconduct that would have violated Circular 230 if the individual were subject to Circular 230, including knowingly providing false or misleading information, or participating in providing false or misleading information, to the IRS.

(e) An individual who is not in compliance with his or her personal federal tax obligations (including employment taxes for which the applicant is personally liable), for the period of such non-compliance. The fact that the applicant is in a dispute

with the IRS regarding a federal tax liability or has entered into an installment agreement (which is not in default), an offer-in-compromise, or both to satisfy a federal tax liability will not be treated as non-compliant with a personal federal tax obligation for purposes of this section.

(f) An individual who has his or her Annual Filing Season Program Record of Completion revoked under section 7 of this revenue procedure, for the period that the IRS determines, based on the facts and circumstances, that such individual is ineligible.

(g) An individual who does not comply with the requirements of this revenue procedure.

.07 *Solicitation restrictions*. A tax return preparer who receives a Record of Completion may not use the term “certified,” “enrolled,” or “licensed” to describe this designation or in any way imply an employer/employee relationship with the IRS or make representations that the IRS has endorsed the tax return preparer. A tax return preparer who receives a Record of Completion for a calendar year may represent that the tax return preparer holds a valid Annual Filing Season Program Record of Completion for that calendar year and that he or she has complied with the IRS requirements for receiving the Record of Completion.

## SECTION 5. APPROVED CONTINUING EDUCATION PROVIDERS

The refresher course and other continuing education requirements described in section 4 must be administered by continuing education providers defined in section 10.9 of Circular 230 and approved by the IRS in accordance with the requirements of

Revenue Procedure 2012-12, 2012-2 I.R.B. 275, and as prescribed in forms, instructions, or other appropriate guidance.

## SECTION 6. REPRESENTATION BEFORE THE IRS BASED ON PREPARING AND SIGNING A RETURN

.01 *Representation of taxpayers before the IRS.* This section permits unenrolled tax return preparers who obtain a Record of Completion to represent taxpayers before the IRS during an examination of a tax return or claim for refund that they prepared and signed (or prepared if there is no signature space on the form), provided the individual (1) had a valid Annual Filing Season Program Record of Completion for the calendar year in which the tax return or claim for refund was prepared and signed; and (2) has a valid Annual Filing Season Program Record of Completion for the year or years in which the representation occurs. The representation permitted under this section does not permit an individual who has a Record of Completion to represent the taxpayer before appeals officers, revenue officers, Counsel, or similar officers or employees of the IRS.

.02 *Modification and Superseding of Revenue Procedure 81-38.* Revenue Procedure 81-38 allows an unenrolled tax return preparer to represent a taxpayer during an examination if the tax return preparer prepared and signed the taxpayer's return that is under examination (or prepared the taxpayer's return that is under examination if there is no signature space on the form).

Revenue Procedure 81-38 is modified and superseded for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015. Unenrolled tax return preparers may not rely on Revenue

Procedure 81-38 to represent taxpayers during an examination of a tax return or claim for refund prepared or signed after December 31, 2015. However, unenrolled tax return preparers may rely on Revenue Procedure 81-38 to represent taxpayers during an examination of a tax return or claim for refund prepared and signed (or prepared if there is no signature space on the form) on or before December 31, 2015.

.03 *Compliance with Circular 230*. Representation of a taxpayer before the IRS under the authority of this section is governed by Circular 230.

## SECTION 7. REVOCATION AND PROTEST

### .01 *Revocation*.

(1) Individuals who fail to comply with the duties and restrictions relating to practice before the IRS in subpart B and section 10.51 of Circular 230 or with any of the requirements described in this revenue procedure will have their Record of Completion revoked and may be prohibited from participating in the Annual Filing Season Program in the future based on the facts and circumstances, including the act that resulted in the noncompliance.

(2) Individuals who represent a taxpayer under the authority of section 6.01 of this revenue procedure who violate Circular 230 during the course of that representation will have their Record of Completion and ability to represent a taxpayer before the IRS under this revenue procedure revoked and other sanctions may be imposed.

### .02 *Protest*.

(1) Prior to any revocation of a Record of Completion pursuant to section

7.01, an individual will be informed in writing of the reason(s) for revocation. The individual may, within 30 days after the date of the IRS notice of revocation, file a written protest, as prescribed by the IRS in forms, instructions, or other appropriate guidance, to demonstrate why the Record of Completion should not be revoked. If an individual's Record of Completion is revoked, the revocation is effective for the entire calendar year for which the Record of Completion would have been valid had the revocation not occurred.

(2) An individual who has been determined to be ineligible to participate in the Annual Filing Season Program under section 4.06 of this revenue procedure may, within 30 days after the date of the IRS notice of ineligibility, file a written protest, as prescribed by the IRS in forms, instructions, or other appropriate guidance, to demonstrate why the individual is not ineligible to participate in the Annual Filing Season Program.

## SECTION 8. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 81-38 is modified and superseded for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015.

## SECTION 9. EFFECTIVE DATE

Except for section 6, this revenue procedure is effective as of June 30, 2014. Section 6 is effective for tax returns and claims for refund prepared and signed (or prepared if there is no signature space on the form) after December 31, 2015.

## SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Hollie M. Marx of the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure contact Hollie M. Marx on (202) 317-6844 (not a toll free call).