

IRS and Treasury officials on August 4 answered questions about return preparer registration, including who must register, future testing and continuing education requirements, and how foreign preparers can use the online process.

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IRS and Treasury officials on August 4 answered questions about return preparer registration, including who must register, future testing and continuing education requirements, and how foreign preparers can use the online process.

Treasury Deputy Tax Legislative Counsel Bryon Christensen said the beginning baseline for preparers who are required to register for a preparer tax identification number under the new return preparer initiative is to be a paid preparer as defined in section 7701. The proposed section 6109 regulations are clear that volunteers are not required to obtain PTINs and that in-house preparers are not within scope of section 7701, he said.

(For the proposed regs (REG-134235-08), see Doc 2010-6378 or 2010 TNT 57-9 (Embedded image moved to file: pic29658.gif)2010 TNT 57-9: IRS Proposed Regulations.)

In explaining the scope of the preparer registration rules during an American Bar Association Section of Taxation teleconference, Christensen said that exercising independent judgment during tax return preparation is a key component for determining the registration requirement. Simple administrative duties do not count as preparation, he said, noting that the first two examples in the proposed regs flesh out what it means to prepare a return, rather than reflect preparation of "substantially all" of a return.

Karen Hawkins, director of the IRS Office of Professional Responsibility, emphasized that under section 6109 there "is no de minimis rule" on number of

returns prepared. Preparation of all or substantially all of a single tax return is sufficient to require a preparer to get a PTIN, she said.

Todd I. Steinberg of Greenberg Traurig LLP said practitioners should be aware that the proposed section 6109 PTIN regulations have broad application and are not limited to income tax. The key reference in the reg preamble encompasses "all forms of tax returns," he said, including estate and gift taxes. Hawkins said that includes preparation of a refund claim, which is deemed to be a tax return for purposes of the refund. The IRS later may consider possible exceptions, but for now all preparers need a PTIN, she said.

Housekeeping

Leann Ruf, communications project lead in the IRS Return Preparer Regulations Implementation Office, said preparers who already have PTINs will be required to "refresh" their PTINs by registering on the new system.

The IRS "wants to start clean with a new database of all return preparers" that will allow data tracking and wants "full information on federal tax return preparers," she said.

Hawkins said mandatory PTIN registration will be a "tremendous benefit to the government" in gathering data on who prepares returns and on their background, licensing credentials, and education and training needs.

The IRS still expects that the online PTIN registration system will be available for use beginning in September, Ruf said. Although the IRS initially envisioned a three-year renewal period, the current design will use annual renewals based on the date of initial PTIN registration rather than a calendar year, she said.

Before they can register, unlicensed preparers will have to pass one of two tests the IRS will soon offer, Hawkins said. During the three-year transition period, preparers can register for a PTIN and take the test at the time of their choosing, she said. After the transition ends, new registrants will have to pass the test before receiving a PTIN.

Continuing education is still being worked on, Hawkins said. There will be different levels of continuing education expectations for preparers depending on their individual competency, she said. Also, the IRS will at some point clamp down under Circular 230 on handing out instructor credentials, she said.

Asked about the user fees preparers will have to pay to register for a PTIN, Ruf said the total amount -- a \$50 fee to cover the IRS's administrative costs and a separate fee to cover the vendor's costs -- "will be closer to \$50 than \$100." Also, PTIN registrants will only pay a single fee during registration. The process of divvying up the fee will happen behind the scenes by the IRS and vendor, she said.

Foreign Preparers

Moderator Rochelle Hodes of PricewaterhouseCoopers LLP said there has been some concern among foreign preparers about their eligibility to register for PTINs because they may not have Social Security numbers, currently required to get a PTIN.

Ruf said the IRS is developing a system for foreign preparers that uses a supplemental PTIN application. Foreign preparers will start the online application process but will be routed to a paper form they will have to fill out and mail in to document their identity, bypassing the SSN requirement. Foreign preparers can expect the process, which has not yet been finalized, to take two to four weeks.

Ruf said she expects the supplemental process to be somewhat similar to the one used for individual taxpayer identification numbers, which requires the submission of original documents or certified copies by an issuing agency.

Compliance Checks

Hodes said there has been some confusion in the preparer community regarding IRS language that it will perform suitability and tax compliance checks on PTIN registrants. Ruf explained that the suitability check involves asking registering preparers whether they are in compliance with their tax responsibilities and if they have been convicted of a felony. If the preparer is not in compliance or has been convicted, the IRS will ask for an explanation while preliminarily allowing the preparer to obtain a temporary PTIN, she said. The tax compliance check component involves ongoing IRS determinations for all registered preparers whether they have filed returns by the return due date or extension date and have paid all their taxes.

OPR is taking the position that practitioners disciplined before January 1, 2011, will not be prohibited from applying for a PTIN during the transition period, Hawkins said. OPR is creating a database from data provided by the Justice Department and the IRS Criminal Investigation division of individuals who have been convicted of Title 26 tax crimes or permanently enjoined by a court from preparing tax returns, she said. A review of each permanent injunction is meant to ensure that only full prohibitions from return preparation are identified, she said. In turn, the information will be given to the registration vendor so that individuals subject to these prohibitions will not be allowed to apply for a PTIN, she said.

Other individuals who may have criminal backgrounds will be asked to self-identify in response to the felony question, although not all felonies will prevent a registrant from obtaining a PTIN during the first round of registration, she said. Rather, the applicant will be given a short time to provide additional information for OPR to determine whether the behavior goes to "fitness to practice" under Circular 230. Crimes involving money, fiduciary duties, and positions of trust will quickly result in a PTIN revocation, she noted, while other felonies will be evaluated in light of their effect on fitness to practice.

Because testing and a background check will become mandatory prior to getting a PTIN once the initial registration period ends, felons will not get a PTIN without testing and a review of their convictions, Hawkins said.

Correction

This article has been corrected to accurately describe the return preparation activity threshold that requires acquisition of a PTIN and the process that certain practitioners will be subject to when applying for PTINs. A full correction is available at Doc 2010-17541 .