

Nevada Task Force on Financial Security
May 21, 2018

Regulation of Tax Return Preparers

Introduction

The Nevada State Board of Accountancy (“Board of Accountancy”) submits the following information at the request of the Nevada Task Force on Financial Security. The Board of Accountancy exists to provide for the dependability of information which is used for guidance in financial transactions or for accounting for and assessing the status or performance of public and private entities; and to protect the interest of the public by regulating those who are engaged in the practice of public accounting.

While tax return preparation is a service regularly performed by licensed CPAs, a CPA license is not required to perform tax return preparation services so long as the preparer does not state or imply that he or she is a CPA. Tax return preparation may also be performed by licensed attorneys and IRS-regulated enrolled agents (EAs). These categories represent the individuals who perform tax preparation services and are regulated at either the state or federal level. The final category of tax return preparers are those who are not regulated and who are often referred to as unenrolled or uncredentialed return preparers.

Definitions

Tax Return Preparer Defined:

- A. A person who, for a fee or for other consideration, prepares, advises or assists in the preparation of, or assume final responsibility for another persons’ preparation of a federal or State income tax return.
- B. A corporation, partnership, association, or other entity that has associated with it persons which shall have as part of their responsibilities the preparation of data and ultimate signatory authority on tax returns or that holds itself out as offering those services or having that authority.

Tax Return Defined:

- A. A return, declaration, statement, refund, claim or other document required to be made or filed in connection with the state or federal income taxes or state bank and corporation franchise taxes.

State Regulation of Tax Preparers

There are currently 5 states which regulate the individuals who prepare state-level tax returns and 1 state that has passed but not yet implemented such regulation:

- California – Register with the California Tax Education Council
Requirements: Fee of \$25, complete a 60-hour course, purchase a \$5000 tax preparer bond, obtain a PTIN number.

- Maryland - Register with the Board of Individual Tax Preparers
Requirements: Fee of \$100 over two years, 80 hours of tax law education, pass an examination, obtain a PTIN number.
- New York - Register with the New York State Tax Department
Requirements: Obtain continuing education annually
- Oregon – Register with the Board of Tax Practitioners
Requirements: A high school diploma or GED certificate, 80 hours of tax law education, and passing an exam, Experience under a tax consultant or CPA
- Illinois - Utilizes the federal Personal Tax Identification Number (“PTIN”) system by requiring any income tax return preparer to include his or her PTIN on any tax return prepared by the preparer and filed under the Illinois Income Tax Act; also gives IL Department of Regulation authority to investigate and take disciplinary action against preparers.
- Connecticut - Register with the Department of Revenue Services
Requirements: Fee of \$100, High school diploma, evidence of experience, education or training, obtain a PTIN number.

Federal Developments

There have been recent attempts to give the IRS express statutory authority over all tax preparers, which would include unenrolled/uncredentialed preparers.

- In 2010 the IRS announced the requirement that all paid tax preparers must obtain a Personal Tax Identification Number (PTIN) when filing federal tax returns. The PTIN is a unique identifier, designed to ensure that the tax preparers are meeting IRS requirements and that their work on behalf of clients can be appropriately monitored and regulated.
- The launch of the PTIN was followed in 2012 by a program to require all paid tax preparers (excluding lawyers, CPAs and enrolled agents) to pass an exam and an on-going education requirement.
- In 2013 the exam and education requirements were struck down by a US District Court and that decision was later unanimously upheld by the U.S. Circuit Court of Appeals.
- The IRS has launched a voluntary credential program that has been challenged by the AICPA in court.
- Some expect taxpayer advocates in Congress to introduce authorizing legislation to overturn the recent court decision.

Nevada 2017 Legislation AB324

The Nevada Legislature passed AB324 that allows the Secretary of State to implement the Document Preparation Services Program. The definition of Document Preparation Service was amended to add the following:

Document Preparation Service means a person who:

- (a) For compensation and at the direction of a client, provides assistance to the client in a legal matter, including without limitation:
 - (5) *Preparing or assisting in the preparation of all or substantially all of a federal or state tax return or claim for a tax refund; or* holds himself or herself out as a person who provides such services.

The Secretary of State requires individuals to submit a form, a fee of \$50 and a cash bond or surety bond in the sum of \$50,000 as required by NRS 240A.120.

It is further noted that CPAs and attorney's have been exempted from this requirement.

Issues Relating to Board of Accountancy Regulation

It appears that each time a state looks at regulating these preparers, the conversation inevitably involves the Board of Accountancy and whether unenrolled preparers can simply be added to the Board of Accountancy's authority. That is where issues get more complicated in terms of how the Board of Accountancy would be structured and how it would operate this separate practice. There is competition to some degree between CPAs, EAs and unenrolled preparers for the tax return market and this would raise another issue for regulation by the Board of Accountancy. In addition, there is no specific set of standards or code of conduct that these preparers must follow.

Summary

- It should be noted that the Board of Accountancy has not taken a position on the subject of Tax Preparer Regulation.
- The timing of this review could also cause issue with the various organizations that are against more regulation and the implementation of anything that could be perceived as a barrier to entry.
- The Secretary of State will already be registering all non-CPA tax preparers under the newly enacted AB324.
- The Federal tax preparer registration program is currently in limbo: implementing additional state-based programs at this time may create conflicts and confusion for tax preparers and taxpayers.
- There is no evidence to support that the regulation and enforcement of competency standards of tax preparers would help the lower income filers and reduce errors in tax returns made by unregulated individuals.