



December 4, 2015

The Hon. Kevin Brady, Chairman
Committee on Ways & Means
U.S. House of Representatives
301 Cannon House Office Building
Washington, DC 20515

The Hon. Sander Levin, Ranking Member
Committee on Ways & Means
U.S. House of Representatives
1236 Longworth House Office Building
Washington, DC 20515

RE: Tax Return Preparer Competency Act of 2015 (H.R. 4141)

Dear Chairman Brady and Ranking Member Levin:

The American Institute of Certified Public Accountants (AICPA) opposes H.R. 4141, the Tax Return Preparer Competency Act of 2015, which gives the Internal Revenue Service (IRS) broad authority to regulate tax return preparers. We appreciate the committee's efforts to address the competency of tax return preparers. The AICPA has always been a steadfast supporter of the goals of enhancing tax return compliance and elevating the ethical conduct of tax return preparers. Ensuring that tax preparers are competent and ethical is critical to maintaining taxpayer confidence in our tax system. Indeed, these goals are consistent with AICPA's own Code of Conduct and enforceable tax ethical standards. However, we believe the Tax Return Preparer Competency Act allows the IRS to overregulate professional, credentialed tax return preparers and their staff without providing adequate value to taxpayers or additional protection to the public.

Congress should not enact yet another set of rules for professional, credentialed tax return preparers. Instead, the AICPA recommends that Congress mandate that the IRS enact a testing and continuing education program similar to the registered tax return preparer program in effect prior to *Loving* that would apply exclusively to so-called "unenrolled" tax return preparers who are not licensed by the states. The National Taxpayer Advocate has stated that the return preparer oversight program was well-planned after extensive consultation with stakeholder groups.¹ We think the one-time basic 1040 "entrance" examination to ensure basic competency in individual income tax return preparation and the requirement for unenrolled preparers to satisfy 15 hours of annual continuing education were both appropriate and necessary to protect taxpayers from incompetence and misconduct, while not raising the bar so high that there are an insufficient number of

¹ National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress, Volume 1, Area of Focus: Tax Return Preparer Standards, page 71, June 30, 2014.

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preparers to assist taxpayers wanting and needing such assistance to navigate the complexity of the Internal Revenue Code.

The IRS should also more effectively utilize their current preparer tax identification number (PTIN) system to protect the public from incompetent and fraudulent tax return preparers. However, the IRS does not currently possess the authority to rescind a PTIN from a tax return preparer. The AICPA urges Congress to grant the IRS narrow and specific authority to revoke a PTIN for failure to comply with regulations. This change is essential to allow the IRS to quickly and efficiently stop incompetent and unscrupulous preparers from continuing to file inaccurate and fraudulent tax returns.

Any legislation should also address the IRS's burdensome requirement that non-signers of tax returns obtain PTINs, particularly because the IRS has no ability to track or use PTINs for individuals who do not sign returns. In fact, the IRS has not shown any data regarding the benefits of requiring non-signers in professional firms to register for a PTIN. We believe that if these individuals are supervised by credentialed preparers who are ultimately responsible for the accuracy of the tax return, there is no reason to require such non-signers (and their firms or companies) to determine if they elevate to the level of a "preparer" or incur the cost of a PTIN.

Certified public accountants and attorneys are highly-regulated and licensed at the state level. They are subject to rigorous education, testing and continuing education requirements as opposed to the "fly-by-the-night tax preparers" that the Tax Return Preparer Competency Act intends to address. Enrolled agents are also subject to continuing education requirements under Circular 230 of the Treasury regulations. The legislation, however, would require all tax return preparers – to presumably include professional, specially-educated, regulated, credentialed preparers and their staff – to satisfy continuing education requirements. In order to prevent potential overregulation and duplicative filing obligations (which would result in higher fees to taxpayers for compliance), we would limit the federal continuing education requirements to the currently-unenrolled tax return preparer community. We also strongly urge you to specifically exempt in the statute credentialed preparers and their non-signing staff from the examination and background checks as opposed to granting the Secretary discretion.

Many individuals are already confused by the different qualifications of preparers and the varying practice rights that they possess. In order to protect the public from unlicensed preparers, who may want to mislead or inadvertently mislead the public on their

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qualifications, Congress should mandate marketplace protections. Specifically, the AICPA recommends that Congress require unlicensed PTIN holders using any paid advertising to display or broadcast a statement explaining the differences between the different type of preparers, their qualifications and that the IRS does not endorse any particular tax return preparer.

The AICPA also recommends that Congress support the exchange of information between the IRS and state taxing authorities. The exchange of tax preparer data (particularly as it relates to incompetent and fraudulent prepares) would improve tax administration by reducing duplicate government resource expenditures and increasing taxpayer compliance.

We look forward to working with the committee and the sponsor of the legislation in order to address our concerns and improve the bill to achieve our shared goal of enhanced tax return compliance and elevation of ethical conduct of tax return preparers.

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The AICPA is the world's largest member association representing the accounting profession, with more than 412,000 members in 144 countries, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of our recommendations and welcome the opportunity to work with you to develop effective legislation to address incompetent and fraudulent tax return preparers. I can be reached at (801) 523-1051 or tlewis@sisna.com; or you may contact Melissa Labant, AICPA Director of Tax Advocacy, at (202) 434-9234, or mlabant@aicpa.org.

Sincerely,



Troy K. Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: Members of U.S. House Ways and Means Committee