



April 19, 2016

The Honorable Orrin G. Hatch, Chairman  
Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Ron Wyden, Ranking Member  
Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

Re: Identity Theft Mark-up Amendment Related to the Regulation of Tax Return Preparers

Dear Chairman Hatch and Ranking Member Wyden:

The American Institute of CPAs (AICPA) commends the Committee on Finance for its continuing bipartisan efforts to combat identity theft and tax fraud. The AICPA has been a steadfast supporter of the goals of enhancing compliance and elevating ethical conduct. 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.

For these reasons, the AICPA would like to specifically express its support for the Wyden amendment relating to regulation of tax return preparers to the second modification to a Bill to Prevent Identity Theft and Tax Refund Fraud. Providing the IRS with a focused and targeted approach with Congressional oversight will help to promote good tax administration and protect the interests of the American taxpayer.

*Authorization to Revoke PTINs*

Currently, the IRS does not possess the authority to rescind a preparer tax identification number (PTIN) from a tax return preparer who has been subjected to (1) preparer penalty provisions under the Internal Revenue Code, or (2) discipline under Circular 230. The IRS must rely on the Department of Justice and the courts to enjoin an individual from preparing tax returns, which can be an expensive and slow process.

The AICPA supports the provision in the Wyden amendment that authorizes the IRS to revoke a PTIN for failure to comply with regulations under either the Internal Revenue Code or Title 31,

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subject to appropriate due process. The AICPA recognizes that this provision is essential to allow the IRS to quickly and efficiently stop incompetent and unscrupulous preparers from continuing to file inaccurate and fraudulent tax returns.

#### Limitation on IRS's Authority to Require a PTIN

The IRS currently requires all “preparers” to obtain a PTIN. Under Circular 230, § 10.8, “Any individual who for compensation prepares or assists with the preparation of all or substantially all of a tax return or claim for refund must have a preparer tax identification number....” However, when individuals are supervised by attorneys, certified public accountants or enrolled agents, who sign the return and are ultimately responsible for its accuracy, these supervised individuals should not be required to obtain a PTIN. We believe such an exclusion from the current PTIN system would recognize the inherent regulatory regime within which CPAs and other Circular 230 legacy practitioners already practice, as well as the fact that CPA firms must stand, as a matter of licensure, behind the work done by the members and employees of their firms.

We therefore support the provision in the Wyden amendment that excludes non-signers from the requirement to obtain a PTIN if those non-signers are supervised by an attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary authorized to practice before the IRS under Circular 230 §10.3(a) through (e); and (ii) the supervising attorney, certified public accountant, enrolled agent, enrolled retirement plan agent, or enrolled actuary signs the tax returns or claims for refund prepared by the individual.

#### Mitigation of Marketplace Confusion

Since some taxpayers are already confused by the different qualifications of preparers and the varying practice rights that they possess, we support the provision in the Wyden amendment that subjects the currently-unenrolled community to the guidance in Notice 2011-45, 2011-25 IRB 886. To mitigate marketplace confusion, it is important that unlicensed PTIN holders using any paid advertising involving print, television, radio, or other medium – *in which the individual represents themselves as a registered tax return preparer* – should display or broadcast a statement directing the taxpaying public to the IRS website where the differences between the various types of preparers (e.g., qualifications) are explained, and informing the public that the IRS does not endorse any particular tax return preparer.

#### GAO Study on IRS's Exchange of Information with State Taxing Authorities

The AICPA supports the provision in the Wyden amendment directing a GAO study on the benefits of increasing the exchange of information relating to return preparers between the IRS and state taxing authorities. We believe the exchange of tax preparer data (particularly as it relates

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to incompetent and fraudulent preparers) would improve tax administration by reducing duplicate government resource expenditures and increasing taxpayer compliance. An information exchange process would also assist states in identifying incompetent or unscrupulous preparers whose PTINs have been revoked by the IRS.

Congress has previously recognized the importance of this information exchange with regard to tax return preparers by permitting the disclosure of Federal tax information to state agencies for tax administration purposes under section 6103(d). The IRS currently exchanges a limited amount of data with states, most notably with regard to penalty assessments under IRC section 6694, 6695 and 7216.

On another matter, the AICPA also encourages the Committee to focus the Treasury and the IRS on enacting a testing and continuing education program similar to the IRS Registered Tax Return Preparer program implemented in 2010. We agree with the National Taxpayer Advocate that the return preparer oversight program was well planned after extensive consultation with stakeholder groups.<sup>1</sup> We think the one-time “entrance” examination to ensure basic Form 1040 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 sufficient to protect taxpayers from incompetence and misconduct, while not raising the bar so high that there are an insufficient number of preparers to assist taxpayers wanting and needing such assistance.

In order to prevent potential overregulation, while addressing taxpayers’ and our members’ concerns regarding the incompetent and fraudulent unenrolled preparers, we strongly recommend limiting the IRS’s regulatory authority to the current parameters of Circular 230.

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We appreciate that the Committee recognizes the need to address incompetent and unscrupulous tax return preparers in conjunction with preventing identity theft and tax refund fraud. Taxpayers need and deserve the protection that the Wyden amendment provides.

The AICPA is the world’s largest member association representing the accounting profession, with more than 412,000 members in 144 countries and a 125-year heritage of serving the public interest. 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.

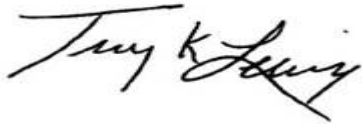
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<sup>1</sup> National Taxpayer Advocate Fiscal Year 2015 Objectives Report to Congress, Volume 1, Area of Focus: Tax Return Preparer Standards, page 71, June 30, 2014.

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We appreciate your consideration of our recommendations and welcomes the opportunity to discuss these comments or to answer any questions that you may have. I can be reached at (801) 523-1051 or [tlewis@sisna.com](mailto:tlewis@sisna.com); or you may contact Melissa Labant, AICPA Director of Tax Policy & Advocacy, at (202) 434-9234, or [mlabant@aicpa.org](mailto:mlabant@aicpa.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Troy K. Lewis". The signature is written in a cursive, flowing style.

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

cc: Members of the Senate Committee on Finance