



# Illinois Tax Return Preparation Task Force

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100 West Randolph Street 9<sup>th</sup> Floor Chicago, Illinois 60601

**DATE:** December 1, 2015

## **MEMORANDUM**

**TO:** The Honorable Bruce Rauner, Governor  
Bryan A. Schneider, Secretary of the Department of Financial and Professional Regulation  
The Illinois General Assembly

**FROM:** **The Illinois Tax Return Preparation Task Force**  
Jay Stewart, Chairperson, *Director of the Division of Professional Regulation*  
Stephen W. DeFilippis, Board Member  
Geoffrey Harlow, Board Member  
Andrew Jennison, Board Member  
Representative Natalie Manley, Board Member  
Senator John Mulroe, Board Member  
James L. Nichelson, Board Member, *Assistant General Counsel of the Department of Revenue*  
Michael Specha, Board Member

**SUBJECT:** Illinois Tax Return Preparation Task Force Report

On behalf of the Tax Return Preparation Task Force, chaired by the Director of the Division of Professional Regulation, Jay Stewart, this Report and Recommendation regarding tax return preparer registration in the State of Illinois, is hereby submitted in compliance with the Illinois Public Accounting Act, 225 ILCS 450/30.9, which requires a report with the Task Force's findings to be submitted no later than December 1, 2015 to the Secretary of Financial and Professional Regulation, the Governor, and the Illinois General Assembly.

# Illinois Tax Return Preparation Task Force

## Report and Recommendation

Mandated by 225 ILCS 450/30.9

December 1, 2015

# Illinois Tax Return Preparation Task Force Report

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# Illinois Tax Return Preparation Task Force Report

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## **Tax Return Preparation Task Force Generally**

225 ILCS 450/30.9 amended the Illinois Public Accounting Act [225 ILCS 450] to create an eight member Tax Return Preparation Task Force made up of various representatives appointed by the Department of Financial and Professional Regulation, Department of Revenue, House of Representatives, and Senate. The Task Force shall prepare a report addressing: (1) the scope of a program for regulating commercial tax preparers; (2) the appropriate qualifications for commercial tax preparers, including educational qualifications and continuing education (“CE”) requirements; and (3) any other necessary or appropriate matters. 225 ILCS 450/30.9 reads in full:

### Sec. 30.9. Tax return preparation task force.

The Department shall convene a task force consisting of 8 members, one of whom shall be appointed by the Department and be a representative of the Department; one of whom shall be appointed by the Department and be a representative of a statewide association representing CPAs; one of whom shall be appointed by the Department and be an enrolled agent or representative of the tax return preparation industry; one of whom shall be the Director of Revenue or his or her designee; one of whom shall be appointed by the Speaker of the House of Representatives; one of whom shall be appointed by the President of the Senate; one of whom shall be appointed by the Minority Leader of the House of Representatives; and one of whom shall be appointed by the Minority Leader of the Senate. The task force shall prepare a report that does the following: determines the appropriate scope of a program for regulating commercial tax return preparers; addresses the appropriate qualifications, including, but not limited to, minimum educational qualifications and continuing educational requirements for commercial tax return preparers; and considers any other matters the task force determines to be necessary or appropriate. The task force shall meet no less than 3 times before the end of the year in which this amendatory Act of the 98th General Assembly becomes effective. The report required under this Section shall be submitted by no later than December 1, 2015 to the Secretary of Financial and Professional Regulation, the Governor, and the General Assembly. Members of the task force shall receive no compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

This Section is repealed July 1, 2016.

## **Tax Return Preparation Task Force Statement**

On March 3, 2015, the Task Force issued the following statement:

The Tax Return Preparation Task Force, created pursuant to the Illinois Public Accounting Act, 225 ILCS 450/30.9, seeks to provide assistance to taxpayers with the following statement:

If you choose to use a paid tax preparer for your state and federal taxes, choose that preparer wisely. A paid tax preparer is responsible for the accuracy of the tax return and by law

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must sign the return and include their Internal Revenue Service (IRS) preparer tax identification number (PTIN). A PTIN officially registers that person as a tax preparer with the IRS.

However, when choosing a tax professional, consider the unique professional qualifications and certifications such as a licensed Certified Public Accountant (CPA), licensed attorney, an IRS enrolled agent, and an IRS unenrolled preparer. CPAs are licensed in Illinois and can be sanctioned by the Department of Financial and Professional Regulation and the IRS. Attorneys are licensed in Illinois and can be sanctioned by the Attorney Registration & Disciplinary Commission and the IRS. Enrolled agents and unenrolled preparers are also subject to the authority of the IRS. Only CPAs, attorneys and enrolled agents can represent taxpayers before the IRS.

Taxpayers should be wary of promotional offers of free tax preparation by cell phone companies, car dealerships and other commercial enterprises. The primary goal of these businesses is to sell a product or service as opposed to the quality and accuracy of the tax return and the expertise of the tax preparer.

Visit the IRS website [www.irs.gov](http://www.irs.gov) for additional tax preparer selection tips.

## Internal Revenue Service

The IRS indicates that “[m]ore than half of the United State’s taxpayers rely on paid tax return preparers” to assist in filing federal tax returns annually. Rev. Proc. 2014-42. Forty percent of paid tax return preparers are attorneys, CPAs, or EAs. *Id.* at 1. However, 60% of paid tax return preparers lack a professional license. *Id.*

### *Registered Tax Return Preparer Program*

In 2011, after an IRS review found problems in the tax preparation industry, the Department of the Treasury issued a new rule regulating tax return preparers. *See* Regulations Governing Practice Before the Internal Revenue Service, 76 Fed. Reg. 32, 286 (June 3, 2011). A tax-return preparer was defined as a person who "prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of any return of tax or any claim for refund of tax under the Internal Revenue Code." 26 C.F.R. § 301.7701-15(a). The 2011 regulations required tax return preparers to register with the IRS by paying a fee and passing a qualifying exam. 31 C.F.R. §§ 10.3(f)(2), 10.4(c), 10.5(b). Each year after the initial registration, a tax-return preparer was required to pay an additional fee and complete at least 15 CE hours. *Id.* at § 10.6(d)(6), 10.6(e).

The IRS indicated that registered tax return preparers had the right to prepare and sign tax returns and claims for refund. They could also represent clients before revenue agents, customer service representatives or similar officers and employees or the IRS during an examination *if* they signed the tax return or claim for refund under examination. This differed from enrolled agents who have unlimited representation before the IRS. Treasury Department Circular No. 230 stated, “A registered tax return preparer’s authorization to practice under this part also does not include the authority to provide tax advice to a client or another person except as necessary to prepare a tax return, claim for refund, or other document intended to be submitted to the [IRS].”

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The IRS indicated that this allowed preparers to provide reasonably necessary advice to clients in these activities.

The IRS indicated that licensed public accountants in Illinois did not have the same “rights and privileges” as certified public accountants and accordingly were required to pass the return preparer examination and satisfy the CE requirements in order to prepare federal tax returns for compensation, unless the accountant was an attorney or enrolled agent.<sup>1</sup>

Over 62,000 persons passed the requirements to become registered tax return preparers.<sup>2</sup>

### *Loving v. IRS*

In February 2014, the registered tax return preparer program regulations were invalidated in light of a Circuit Court finding. *Loving v. Internal Revenue Service*, 742 F.3d 1013 (D.C. Cir. 2014). Circuit Judge Brett Kavanaugh noted that the IRS estimated the regulations would apply to 600,000 to 700,000 preparers. The IRS relied on 31 U.S.C. § 330, which authorizes the IRS to regulate the practice of representatives of persons before the Department of Treasury, to enact the regulations. Section 330 also permits the Treasury Department to ensure that a person has “good character” and “competency to advise and assist persons.” *Id.* at 1015 (citing 31 U.S.C. § 330(a)(2)). Additionally, the IRS may discipline persons who show incompetency, violate Section 330, or willfully defraud or mislead.

Three independent tax return preparers, include Sabina Loving from Chicago, Illinois, argued that the IRS’ regulations exceeded the agency’s authority under the statute. The Court noted that preparers were not considered “representatives” pursuant to Section 330 because such persons are not “agents,” do not “possess the legal authority to act on the taxpayer’s behalf,” and “cannot legally bind the taxpayer.” *Loving*, 742 F. 3d at 1017. The Court indicated that a taxpayer is still required to sign and submit their own tax return regardless of representation by a tax preparer. Further, tax return preparers merely “assist” the taxpayer. *Id.*

The Court held that the IRS could not expand its historical authority in reading Section 330. Accordingly, the D.C. Circuit Court of Appeals affirmed the judgment of the District Court, holding the regulation of preparers as practitioners before the IRS invalid.

### *Preparer Tax Identification Numbers*

The IRS continues to offer Preparer Tax Identification Numbers (PTIN). Paid tax return preparers must obtain a PTIN. Rev. Proc. 2014-42 (citing Treas. Reg. § 1.6109-2). This includes anyone who prepares all or substantially all of any federal tax return or refund claim for compensation. In order to obtain a PTIN, an individual must complete an application including

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<sup>1</sup> <http://www.irs.gov/tax-professionals/frequently-asked-questions:-preparer-credentials> (accessed July 7, 2014).

<sup>2</sup> <http://www.irs.gov/uac/Newsroom/New-IRS-Filing-Season-Program-Unveiled-for-Tax-Return-Preparers> (accessed December 10, 2014); see also IRS News Release, *Nearly 44,000 Tax Return Preparers Completed the First Voluntary Education Program Offered by the IRS to Prepare for the 2015 Filing Season*, IR-2015-90, June 18, 2015, <https://www.irs.gov/uac/Newsroom/Nearly-44,000-Tax-Return-Preparers-Completed-the-First-Voluntary-Education-Program-Offered-by-the-IRS-to-Prepare-for-the-2015-Filing-Season>.

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explanation of any felony convictions or problems with individual or business tax obligation. The individual must also pay a \$64.25 user fee. The PTIN needs to be renewed annually and the cost for renewal is \$63.

The following indicates return preparer office federal tax return preparer statistics as of March 2, 2015:<sup>3</sup>

<b>Number of Individuals with Current Preparer Tax Identification Numbers (PTINs) for 2015†</b>	<b>687,881</b>
Professional Credentials‡	
Attorneys	<b>28,888</b>
Certified Public Accountants	<b>207,491</b>
Enrolled Actuaries	<b>369</b>
Enrolled Agents	<b>49,610</b>
Enrolled Retirement Plan Agents	<b>670</b>
Other Qualifications	
Annual Filing Season Program Records of Completion Issued	<b>43,209</b>

† Cumulative number of individuals issued PTINs since 9/28/2010: **1,130,729**

‡ Some preparers have multiple professional credentials and qualifications.

This data indicates that since 2010, over 457,000 preparers had a PTIN at one time but are no longer current.

## *Voluntary Tax Preparer Education Program*

In June 2014, the IRS announced a voluntary tax preparer education program known as the Annual Filing Season Program. Rev. Proc. 2014-42. The IRS “encourage[s] tax return preparers who are not attorneys, . . . CPAs . . . , or enrolled agents (EAs) to complete [CE] . . . courses for the purpose of increasing their knowledge of the law relevant to federal tax returns.” *Id.* at 1. The program does not require a formal qualifying exam like that offered in the Registered Tax Return Program. Instead, tax preparers obtain a PTIN and take an annual refresher course and course examination administered by an IRS approved CE provider. Applicants must obtain a passing score of 70% on the 100 question examination. Attorneys, CPAs, EAs, individuals who previously passed the registered tax return preparer examination, and tax return preparers who are licensed/registered by a state are exempt from the course.

Upon completion of all requirements, an individual will receive a Record of Completion which is valid only for a calendar year. Applicants required to complete the course must complete 18 CE hours from an IRS approved CE provider during the calendar year prior to which the Record of Completion is sought. The total hours must include 2 hours of

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<sup>3</sup> "Return Preparer Office Federal Tax Return Preparer Statistics." [Http://www.irs.gov/Tax-Professionals/Return-Preparer-Office-Federal-Tax-Return-Preparer-Statistics](http://www.irs.gov/Tax-Professionals/Return-Preparer-Office-Federal-Tax-Return-Preparer-Statistics). Internal Revenue Service, n.d. Web. 24 Mar. 2015.

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ethics/professional responsibility, 10 hours of federal tax law “topics,” and 6 hours of federal tax law “updates.” Individuals exempt from the course must complete 15 CE hours.

Additionally, restrictions on eligibility prohibit persons who are disbarred, disqualified, or suspended from practice before the IRS from obtaining a Record of Completion. Also, as a prerequisite to receiving a Record of Completion, an individual must consent to the duties and restrictions relating to practice before the IRS as set forth in Treasury Department Circular No. 230. A Record of Completion is subject to revocation for persons who fail to comply with revenue procedures.

This revenue procedure does not limit the ability of attorneys, CPAs, or EAs to represent taxpayers before the IRS. An individual with a Record of Completion may not use the terms “certified,” “enrolled,” or “licensed” to describe themselves.

### *AICPA’s Response*

The American Institute of CPAs (AICPA) indicates that the voluntary tax preparer education program “would cause significant legal problems that may ultimately frustrate the IRS’s goals, confuse the public, and lead to litigation.” AICPA Press Release (June 204, 2014). The AICPA indicates that no statute authorizes the program and that is meant to avoid *Loving v. IRS*. The AICPA also points out that the IRS failed to hold a public notice and comment period. They also argue that proposal is “arbitrary and capricious because it fails to address the problems presented by unethical tax return preparers, runs counter to evidence presented to the IRS, and will create market confusion. *Id.*”

### **City of Chicago Tax Preparation Ordinance**

On March 14, 2012, the City of Chicago passed a Tax Preparer Ordinance in order to prevent predatory practices. Municipal Code of Chicago Ch. 4-44. The ordinance mandates that tax preparers offer detailed explanations of their services and prices, provide an estimate of total charge to customers, certify all required disclosures were provided, inform customers of the reasonable time period to expect a refund, that customers have the right not to utilize certain products, and of customer’s right to file a complaint. The ordinance permits the Chicago Department of Business Affairs and Consumer Protection to investigate and fine tax preparation businesses up to \$750 per violation.

In 2013, the City received 13 complaints against tax preparation businesses, with complaints arising out of the Mo Money scheme and claims of persons offering services “without proper licensure.” In 2013, 93 Chicago businesses specified tax preparation services as their business activity on their paperwork with the City. The majority of these businesses are branches of H&R Block and Jackson Hewitt.

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## Attorney General Complaints

The Attorney General has received the following tax preparer complaints:

- 76 in 2011
- 206 in 2012
- 66 in 2013
- 62 in 2014
- 49 in 2015, as of June 2015

The increase in 2012 was due to the Mo Money scheme which later led to federal charges.

## Illinois Department of Revenue

On September 23, 2015, Illinois Department of Revenue's Assistant General Counsel and Task Force Member Jim L. Nichelson discussed IDOR's relationship with paid tax preparers. Jim reached out to various IDOR representatives and units to discuss this issue, including: audit, taxpayer assistance, processing, hearings, and criminal investigations. All units reported that although there are occasional complaints against paid tax preparers through an IDOR hotline, this results in minimal cases that warrant investigations of paid tax preparers. Although IDOR is aware of the high frequency of fraud in this arena, there are very little instances of fraud actually reported to IDOR. IDOR works closely with the IRS and banks to monitor fraud and attempts to recover monies whenever possible.

IDOR's Board of Appeals is its equitable jurisdiction which allows taxpayers to seek hardship or reasonable cause relief. The Board hears 2,500 to 3,000 appeals per year, of which only 20-30 complaints relate to paid tax preparers. Of all taxpayers who file petitions with the Board of Appeals, IDOR estimates that approximately 30% of them are represented by a paid preparer. Complaints about paid tax preparers usually generate from business, rather than individuals, and are often related to a business obtaining a new paid preparer.

IDOR receives a small handful of cases each year regarding the willful misconduct or fraud of preparers. An example of fraud would be a case in which a preparer intentionally misstates a refund in order to keep the difference. This area is difficult to detect fraud in, which is in part due to IDOR's competing pressures of identifying fraud and promptly issuing refunds to taxpayers who are due a refund.

Overall, IDOR receives very few complaints each year regarding paid tax preparers.



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## **Model Individual Tax Preparer Regulation Act**

The National Consumer Law Center (NCLC) created the Model Individual Tax Preparer Regulation Act, revised in November 2013, in light of a report they conducted indicating tax return preparers are not subject to any minimum standards. The report indicates “a lack of regulation allowed incompetence and fraud by tax preparers to flourish and urges states to require paid preparers to demonstrate basic competency and skills as well as to provide upfront fee disclosures.” The report indicates tens of millions of Americans residents use paid tax preparers, including over 60% of lower-income earned income tax credit recipients.

The NCLC states that “incompetence and fraud” by tax preparers indicate “widespread and endemic problem[s] across the industry.” The report relies on mystery shopper testing by the government agencies, consumer groups, and advocacy organizations findings errors, fraud, and other abuses. The NCLC also points to a lack of transparency in fees, as high as \$500 for simple returns.

The Model Act, which is based on the current regulations in Oregon, Maryland, and California, is meant “to ensure that consumers, as well as state and federal treasuries are protected.” The Act recommends the following tax preparers be required to obtain a registration unless they fit into one of exceptions for the limited number of tax preparers already regulated, such as certified public accountants, enrolled agents, and lawyers. Additionally the Act recommends that tax preparers pass a basic competency exam and complete 60 hours of initial education and 15 hours of CE per year. Notably, the Act recommends that preparers provide a standardized disclosure of their fees.

### **Licensure in Other States**

Currently, the following four states license/regulate tax preparers: New York [NY Code § 32; California [Cal. Business and Professions Code 22250-22259]; Oregon [ORS 673, *et. seq.*]; and; Maryland [09 Department of Labor, Licensing, and Regulation 38 Chapter 01, *et. seq.*].

#### *New York*

New York issues tax preparer registrations to prevent incompetence and fraud.<sup>4</sup> Enacted in 2009, New York Tax Law requires the registration of “tax preparers” who prepare a substantial portion of any return for compensation and “commercial tax return preparers” who prepare ten or more returns for compensations in the preceding or current calendar year. NY Code § 32(a)(3)-(4). These persons must pass a competency examination, complete 4 CE hours annually, have a high school degree or equivalent, and pay an annual \$100 fee. Registration must be completed annually and upon successful registration applicants may print a “Certificate of Registration.”

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<sup>4</sup> See also New York State Report of the Task Force on Regulation of Tax Return Preparers, September 28, 2011, [https://www.tax.ny.gov/pdf/documents/task\\_force\\_report\\_reg\\_preparers.pdf](https://www.tax.ny.gov/pdf/documents/task_force_report_reg_preparers.pdf).

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Each registered tax preparer is assigned a New York Tax Preparer Registration Identification Number (NYTPRIN) which must be listed on each return. *Id.* at (b)(2)(B). The NYTPRIN is required on returns and refund-related documents which require signature. These persons must also separately register with the IRS for a PTIN.

Additionally, tax preparers are subject to discipline arising from misrepresentation, fraud, or deceptive practice. *Id.* at (f). Tax preparers must certify compliance with all child support obligations, if any.

New York attorneys, public accountants, and CPAs are exempt from registration. *Id.* at (a)(14). Additionally, volunteer tax preparers and employees preparing returns for their employer are exempt. *Id.* Notably, approximately 800 Illinois based tax preparers are registered in New York.

### *California*

The California Business and Professions Code issues tax preparer registrations in order to enable the public to easily identify credible tax preparers to ensure the protection of confidential information and prohibit fraud and misrepresentation. Cal. Business and Professions Code 22251.1. The Code sets forth the limited instances in which the disclosure of a tax preparer's client's confidential information shall be disclosed. *Id.* at 22252.1. The Code creates the California Tax Education Council which is responsible for issuing registrations, denying applications, and disciplining registrants. *Id.* at 2251.2.

The Code defines a tax preparer as: “(A) A person who, for a fee or for other consideration, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who holds himself or herself out as offering those services” and “(B) A corporation, partnership, association, or other entity that has associated with it persons not exempted . . . [from licensure], which persons 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.” *Id.* at 22251(a).

The Code requires the following qualifications for tax preparers: (1) at least 18 years old; (2) maintains a \$5,000 bond issued by a surety company; (3) completes 60 hours of instruction in basic personal income tax law, theory, and practice; and (4) pay a \$25 fee. *Id.* at 22250(a); 22251.3(b). Tax preparers must also identify all other tax preparers who are employed by or associated with the applying individual. *Id.* at 2250(c).

The Code exempts California licensed CPAs, California attorneys, and certain financial institutions from registration as a tax preparer. *Id.* at 22258(a). The Code requires that inactive CPAs and non-California CPAs who prepare income tax returns for a fee in California register as California tax preparers or become an active California CPA. It is currently unknown how many Illinois based persons are registered as tax preparers in California.



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## *Oregon*

Oregon created the State Board of Tax Practitioners to license “tax consultants” and “tax preparers.” ORS 673.625. The State indicates that a tax consultant is sufficiently experienced to prepare personal income taxes and may work on their own as an employee. Alternatively, a tax preparer is an “apprenticeship level” for preparing personal income taxes. A tax preparer must work under the supervision of a licensed tax consultant, CPA, public accountant, or attorney who prepares tax returns for clients.

Tax preparers must (1) be at least 18 years old; (2) possess a high school diploma or equivalent; (3) complete 80 hours of training in income tax law; (4) possess an IRS preparer tax identification number; and (5) pass a competency examination. *Id.* at (1)-(2). Tax consultants must meet these requirements and also complete 1,100 hours of active employment within two of the last five years. *Id.* at 673.625(3). Tax preparers and consultants must complete 30 CE hours per year. *Id.* at 673.655. Applicants are allowed five hours to sit for the examination.

Enrolled agents with the federal government may take the state-only portion of the tax consultant’s examination to become a licensed tax consultant and is not subject to the education requirement. State-only applicants are allowed 1.5 hours to sit for the examination. Enrolled agents must verify 360 hours of experience preparing personal income tax returns within two of the last five years.

These licensees are subject to discipline for a variety of actions arising out of fraud and misrepresentation. Notably, no Illinois based persons are registered tax preparers or consultants in Oregon.

Entities providing tax return preparation services are required to annually register. *Id.* at 673.643. Attorneys, Oregon CPAs, and employees preparing returns for their employer are exempt from licensure. *Id.* at 673.610.

## *Maryland*

A registration issued by the Maryland State Board is required to prepare Maryland individual tax returns. A tax preparer registrant must: (1) hold an IRS preparer tax identification number; (2) be at least 18 years old; and (3) hold a high school diploma or equivalent. After December 31, 2015 applicants must complete a competency examination. Licensees must complete 16 CE hours every two years. Attorneys, CPAs, and employees preparing returns for their employer are exempt from registration.

The Maryland State Board of Individual Tax Preparers qualifies tax preparers. The board is authorized to deny registration, reprimand a registered individual, or suspend or revoke a registration. Notably, there are 30 Illinois based persons are registered tax preparers in Maryland.

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### *Overview of Fees and Licensees in Other States*

State	Registration/License	Fees	Number of Registrants/ Licensees
New York	tax preparer	no fee, but still must register	40,000
	commercial tax return preparer	\$100 annual registration fee	
California	tax preparer	\$25 application fee;\$40 late application fee \$25 annual registration fee; \$55 late registration fee	40,000
Oregon	tax preparer	\$50 application fee \$70 annual renewal fee	2,250
	tax consultant	\$95 application fee \$95 annual renewal fee	1,800
	tax preparation business	\$100-\$145 application fee \$100-\$145 annual renewal fee (fee is dependent on association with a licensed individual)	1,300
Maryland	tax preparer	\$100 application fee \$100 bi-annual renewal fee	3,700

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## Task Force Guests

The following guests spoke or submitted written statements to the Task Force on the following dates:

<b>Date</b>	<b>Person &amp; Title</b>
February 10, 2015	Edward S. Karl, American Institute of CPAs
February 10, 2015	Thomas J. Walsh, Thomas J. Walsh Consulting LLC
February 10, 2015	Howard D. Ellison, Wermer Rogers Doran & Ruzon, LLC
June 25, 2015	Matthew Frost, City of Chicago
June 25, 2015	Vijay Raghavan, Office of the Attorney General
June 25, 2015	Chi Chi Wu, National Consumer Law Center
July 30, 2015	Douglas Blackstone, Maryland Board of Individual Tax Preparers
July 30, 2015	Richard Ernst, New York State Department of Taxation and Finance
July 30, 2015	Howard Moyes, Oregon Board of Tax Preparers
July 30, 2015	Celeste Heritage, California Tax Education Council
August 20, 2015	Carol Campbell, IRS Return Preparer Office, Director of RPO Office
August 20, 2015	Eric Sternberg, Center for Economic Progress
August 20, 2015	Robert Kerr, National Association of Enrolled Agents
August 20, 2015	Stan Hutchinson, Tax Tech Inc.
August 20, 2015	Martin Lieberman, Community Currency Exchange Association
September 23, 2015	James McTigue and Libby Mixon, U.S. Government Accountability Office
September 23, 2015	John Ams and Steve Haworth, National Society of Accountants
September 23, 2015	Illinois CPA Society
September 23, 2015	Paul Harrison, Center for Economic Progress
October 16, 2015	Saul Larsen, State of Colorado
October 16, 2015	Karen Hawkins, formerly of the IRS Office of Professional Responsibility
October 16, 2015	Jeremy Stohs, Director, Government Relations of H&R Block
October 16, 2015	Irwin Nadel, New Jersey Department of Treasury

### *Edward S. Karl*

Edward S. Karl, CPA, CGMA, American Institute of CPAs (AICPA), Vice President – Taxation, spoke before the Task Force on February 10, 2015. Mr. Karl submitted a statement entitled, “Testimony before the Illinois Tax Return Preparation Task Force’s Consideration of the Creation of an Illinois Tax Preparers Registration Program.” The statement reads as follows:

Mr. Chairman, thank you for the opportunity to testify before you today. I am speaking today on behalf of the American Institute of CPAs. We are the world’s largest member association representing the accounting profession, with more than 400,000 members in 145 countries, and a history of serving the public interest since 1887. I would like to begin by commending the leadership of this Task Force and your willingness to listen to diverse perspectives, including those of the AICPA.

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The AICPA supports the goals of enhancing compliance and elevating ethical conduct among tax 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 the AICPA's own Code of Conduct and enforceable tax ethical standards (Statements on Standards for Tax Services).

The charge before you is not a simple one, and there are a number of potential solutions which you may wish to consider as you seek to fulfill your mandate of protecting Illinois tax payers. Some of these options will certainly prove more effective than others.

I would like to begin my testimony by discussing a path which I believe the Task Force should strongly oppose. And, then I would like to discuss a set of solutions which the AICPA believes will be the most effective and responsive to the ways in which tax preparation is currently performed.

First and foremost, the AICPA believes that the Task Force should not recommend the creation of a new state-based tax preparer registration program in Illinois, as there are a number of issues and serious concerns with regard to the regulation of preparers at the state-level. We believe that there are other more effective ways to protect the citizens of Illinois from unqualified and unscrupulous tax preparers.

I would also like to note that I am pleased to be joined on today's call by another strong opponent of a new duplicative state-based regulatory model, the Illinois Society of CPAs. The CPA profession in Illinois is unified in its opposition to this type of proposal.

Only four states – California, Maryland, New York, and Oregon – have opted to create their own programs to regulate tax return preparers, and this may be due, in part, to the fact that such state-based programs are limited in their effectiveness. In particular, they are limited in reach to their respective states, do not readily allow for the sharing of information with other states or the Internal Revenue Service, and fail to reflect that tax preparation is often done across state lines. For example, someone in Illinois who prepares taxes for someone in California and in New York will have to register separately in both states, meet the variable compliance requirements of those jurisdictions, and his or her work cannot be readily examined or tracked across the jurisdictions. Furthermore, if an Illinois tax preparer chose simply not to register in those other jurisdictions, it would be next to impossible for the state of California or New York to track down that individual and enforce its law.

Additionally, as you know, some municipalities, such as the City of Chicago, have developed their own tax preparer ordinances. Unfortunately, these municipal-level ordinances present the same shortcomings as state programs and should not be expanded to other municipalities.

In addition to not being particularly effective or reflecting the modern reality of tax preparation, state-based programs add an unnecessary layer of cost and regulatory burden for tax preparers and those expenses will most likely be passed directly on to taxpayers. It is also important to note that the bad actors whom these programs are designed to thwart are the

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individuals who are most unlikely to participate in state-based programs and may continue to harm the public.

Additionally, the AICPA is particularly concerned that these types of programs could pose a serious risk to the success of CPAs and their firms around the country. CPAs, operating under states' interstate mobility laws, which grant a CPA licensed in one state an automatic practice privilege in another state, could be newly required to register in multiple states if state tax preparer programs are passed. This would completely undermine the success of the profession's highly successful CPA mobility campaign. In effect, such programs would harm the profession and the taxpayers we serve without providing significant and tangible protections to the public. Conversely, if CPAs are excluded from a state-based program and its registry, then taxpayers may not know, when reviewing the registry, that CPAs may offer tax preparation services in the state. Out-of-state CPAs are at particular risk.

In 2010, the Internal Revenue Service announced a requirement that all paid tax preparers must obtain a Personal Tax Identification Number or PTIN when filing Federal tax returns. The program was established to provide paid tax preparers with a means to identify themselves, by using a number other than their Social Security Number, on a tax return and as a way to safeguard them against identity theft. This unique identifier ensures that tax preparers are meeting IRS requirements and that their work on behalf of clients is appropriately monitored and regulated. When applicable, the PTIN must be placed in the Paid Preparer section of a tax return that the tax return preparer prepared for compensation.

Should Illinois wish to enhance its monitoring of tax preparers, the AICPA recommends that the state leverage the existing Federal PTIN program, rather than creating a new program. Such an approach would protect taxpayers, strike the right balance between additional regulation and avoiding unnecessary, complicated, new regulations, ensure better compliance with our state and federal tax laws, and promote uniform oversight of tax preparation by Illinois and the Federal government.

More specifically, to achieve the goals of the Task Force, we recommend that any proposed state-level program have the following components:

- Rather than creating a new duplicative registry, preparers of Illinois state tax returns should place their Federal PTIN on any state tax return. This will create a uniform way to consistently track and regulate tax preparers for any work they do in Illinois, for Federal returns, or for any other taxing jurisdiction which may adopt such an approach. Fines should be established for state-level preparers who do not comply with this requirement.
- The state department of revenue should establish formal and regular communications channels with the IRS to share information about problems found in returns prepared by certain tax preparers. They should also set up a process to notify each other of any action taken against specific tax preparers.
- The state department of revenue should perform compliance audits on returns when there is sufficient evidence that a return has been improperly prepared. If returns associated

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with a particular PTIN are found to consistently have problems, the tax preparer should be contacted and asked to explain the questionable positions taken.

- The state departments of revenue should be given the ability to bar non-CPA PTIN holders from filing returns in the state, if, after an appropriate due process, the PTIN holder is found not to be competent, ethical, and/or in compliance with state or Federal laws and requirements. Additionally, the state department of revenue should be authorized to impose fines on or require corrective/remedial action of non-CPA tax preparers. Questions in regard to returns prepared by CPAs should be referred to the state board of accountancy and the board of accountancy should take any appropriate action related to the licensee, including fines, remediation, or prohibitions on practice. The IRS and state department of revenue should be notified of any action taken against both non-CPAs and CPA PTIN holders in the state.

By implementing these simple and uniform changes, the AICPA believes that the Illinois state department of revenue could best protect taxpayers and enhance compliance, quality, and oversight. Such a program, should Illinois wish to adopt it, would also avoid creating a complicated and expensive state bureaucracy that does not necessarily serve the public interest or protect taxpayers.

Additionally, the Illinois Department of Revenue may want to consider undertaking a sustained educational campaign to increase public awareness about how to select an appropriate tax preparer. Such a campaign could be undertaken in partnership with the Illinois Attorney General's Office, the Illinois CPA Society, taxpayer rights groups, and other strategic partners, particularly those working in vulnerable communities.

Mr. Chairman, I want to thank you and the Task Force members for your time today. And, I want to thank you for your leadership on behalf of taxpayers and, more broadly, in regard to the protection of the public. Our profession is united in our commitment to finding solutions to protect the public from unscrupulous and incompetent tax preparers. Please know that the AICPA is ready to assist you however we can in moving forward on this issue.

*Thomas J. Walsh*

Thomas J. Walsh of Thomas J. Walsh Consulting LLC was a Task Force guest on February 10, 2015. He acted as the independent lobbyist for H&R Block that assisted in amending the Illinois Public Accounting Act to create the Task Force. He discussed the background of the legislation creating the Task Force. He indicated that the Attorney General was in support of the creation of the Task Force. Mr. Walsh discussed the primary issues with the scope of problems the Task Force is seeking to prevent, such as fraud, competency, and compliance.

*Howard D. Ellison*

Howard Ellison, CPA, CVA, CMA, of Wermer Rogers Doran & Ruzon, LLC was a guest before the Task Force on February 10, 2015. He has been practicing public and private accounting since 1991 and has been involved with tax planning and preparation for individuals

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and business entities, specializing in closely-held family businesses for litigation, merger and acquisition, pension valuations and litigation support services.

Mr. Ellison indicated that the goals of the Task Force are of critical importance and inquired as to whether these goals are consumer advocacy issues. He discussed Illinois' understated income issues and posed the question of whether this is client based issue or a tax preparer based issue. He stated Illinois' understated income is generally limited to taxpayers' with businesses or rental properties understating income, since general taxpayers' issues at the Federal level are usually related to Schedule A itemized deductions, which do not impact Illinois tax returns. For example, the complaints associated with tax preparation may be based on a client's arbitrary adjustments to make tax returns appear reasonable, which may not be due to the tax preparer's actions.

He also indicated that in comparison to other states and the federal tax return, the State of Illinois' tax return is basic. Illinois is not as affected by tax preparer competency, in comparison to other states and the federal level, because there are typically less issues with Schedule A. Mr. Ellison encouraged analysis of the IRS' PTIN system. A PTIN system may allow tracking of issues and may result in fees from fines.

### *Matthew Frost*

Matthew Frost was a guest before the Task Force on June 25, 2015. He is an Attorney for the City of Chicago Department of Business Affairs and Consumer Protection. He prosecutes business licensing, consumer protection and cigarette tax violations before the City's Department of Administrative Hearings, and oversees the review of tax preparer submissions and prosecution of associated violations. Mr. Frost graduated from Loyola University Chicago School of Law in 2011.

### **City of Chicago Ordinance Overview**

Mr. Frost spoke regarding the City of Chicago's requirements for business licenses for tax preparer practices. Tax preparers are required to obtain limited business licenses and the application must specifically declare tax preparation as a business activity. He indicated that there are approximately 400 tax preparer businesses in the City of Chicago, which included licensed and unlicensed businesses. The City Council passed consumer protection requirements as to this industry, which exempted certain individuals and business, including CPAs, attorneys, and not-for-profits. Enrolled agents are not included in this exemption. Every non-exempt tax preparer is required to submit a disclosure form annually for approval by the City of Chicago Department of Business Affairs and Consumer Protection.

A consumer bill of rights is required prior to rendering any services, which must offer a detailed explanation of available services. The tax preparer is tasked with generating this form, which tends to vary widely in format. This shall also include: (1) the price of each offered service and any and all fees; (2) an estimate of the total charge to the consumer based upon the tax preparation purchased; and (3) the period of time that the consumer can reasonably expect to wait for a refund. Tax preparers must certify that they provided all of the required disclosures



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and explanations. Consumers are directed to file a formal complaint with the City of Chicago by phone via 311 or by mail via Complaint Intake if their rights are violated.

## **City of Chicago Investigations**

Mr. Frost indicated that the consumer investigation group for the City has a 100% target rate, meaning it has been the goal of the City's investigations group to investigate every business that is licensed or should be licensed under the tax preparer ordinance. The City uses a "secret shopper program" in which consumer investigators enter businesses to ensure that a consumer bill of rights and disclosure form is provided. The City also utilizes overt "premises check" investigations to ensure compliance. The investigators work seasonally, during tax season, with about 6 investigators. One prosecutor and a law clerk handle the cases. The City does not work with the IRS in any of these cases. He shared the following investigation results:

- Of the 409 businesses visited by City inspectors 65 percent were in compliance
- 334 Administrative Notices of Violations (ANOVs) were issued to 147 businesses
- 4 cease and desist orders
- 13 notices to correct
- Less than 5% in compliance in 2013, but 42% in compliance in 2014
  
- Of the 147 businesses cited in the first round of investigations in 2015, 21 (approximately 5% of those investigated or 14% of those cited) were not properly licensed

## **City of Chicago Consumer Complaints**

The City receives consumer complaints regarding tax preparation through the "311" phone number, however, the volume of complaints is low. Typically, the number of complaints is less than 100 every year. For example, in 2013, there were approximately a dozen complaints received. The major complaints are: (1) price disputes; (2) tax preparers who have "disappeared" and/or "stopped returning calls;" and (3) incomplete/incorrect returns filed, returns not filed.

### *Vijay Raghavan*

Vijay Raghavan is an assistant attorney general in the Consumer Fraud Bureau of the Illinois Attorney General's Office, where he litigates violations of federal and state consumer protection laws. Prior to joining the Attorney General's office, Vijay was a public service fellow at Prairie State Legal Services, Inc., and a tax associate at Skadden, Arps, Slate, Meagher & Flom LLP in Chicago. Vijay graduated from the University of Chicago Law School in 2007.

## **Illinois Tax Refund Anticipation Loan Reform Act**

Mr. Raghavan indicated that the Attorney General investigates and litigates violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505, which prohibits unfair and deceptive acts or practices. Additionally, the Office monitor compliances with the Illinois Tax Refund Anticipation Loan Reform Act, 815 ILCS 177 ("IL RAL Act"). In effect since January 1, 2013, the IL RAL Act sets disclosure requirements for preparers that offer



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tax-related financial products and affirmative prohibitions on certain practices. It includes an add-on fee prohibition which states,

[No person shall] [c]harge or impose any fee, charge, or other consideration in the making or facilitating of a refund anticipation loan or refund anticipation check apart from the fee charged by the creditor or financial institution that provides the loan or check. This prohibition does not include any charge or fee imposed by the facilitator to all of its customers, such as fees for tax return preparation, if the same fee in the same amount is charged to the customers who do not receive refund anticipation loans, refund anticipation checks, or any other tax related financial product.

815 ILCS 177/25(a). It also includes a rate cap on non-bank refund anticipation loans:

No person shall make or facilitate a refund anticipation loan for which the refund anticipation loan interest rate is greater than 36% per annum. The refund anticipation loan interest rate shall be calculated as set forth in Section 5. Any refund anticipation loan for which the refund anticipation loan interest rate exceeds 36% per annum shall be void ab initio.

*Id.* at 30(a).

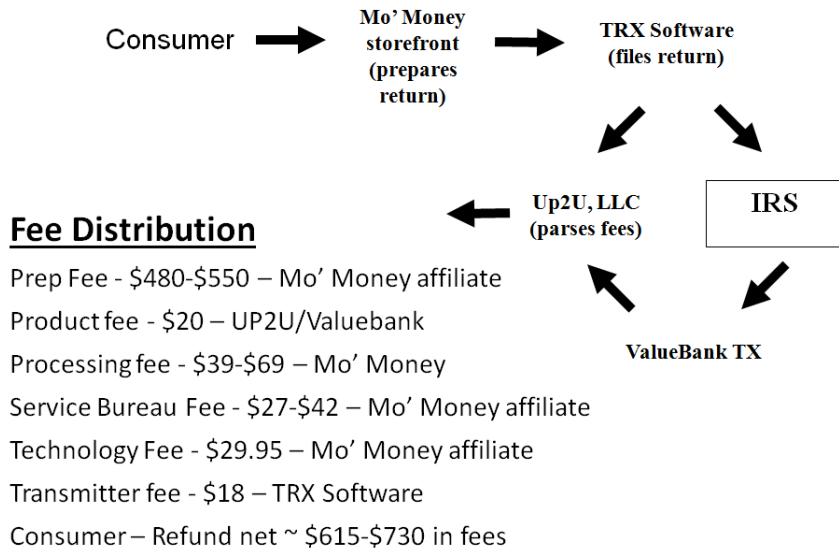
## **Consumer Complaints**

The Attorney General receives consumer complaints against preparers. Complaints fall into three buckets: (1) “Where’s my refund?” (potential criminal ID theft); (2) preparer “screwed up” my return; and (3) offer mill complaints (who offer to settle tax debt for “pennies on the dollar”). The Attorney General has a large mediation staff of non-attorneys who typically handle most complaints without the need for further investigation. Less than 1% of the complaints received by the Attorney General relate to tax preparers.

## **People v. Mo’ Money**

In 2012, the Attorney General’s Office filed a civil enforcement action against a national tax preparer, *People v. Mo’ Money*, Case no. 12 CH 09136, in Cook County, Illinois. Mo’ Money was a large chain with approximately 250 stores nationally at its height. Mo’ Money engaged in a phantom refund anticipation loan bait-and-switch as Mo’ Money had no financing for the refund anticipation loans it advertised. Consumers who applied for refund anticipation loans had to fill out an IRS Form 8879, *e-file* Signature Authorization, in order to apply for refund anticipation loans, which Mo’ Money used to file unauthorized returns and issues refund anticipation checks with significant fees.

## Mo' Money Fee distribution



The Illinois Attorney General sued Mo' Money on March 14, 2012 for engaging unfair and deceptive practices and the Department of Justice filed a civil suit on December 5, 2012. Partial proceeds from the scheme were interpled and partially recovered as restitution and to offset tax liabilities, *ValueBank, TX v. UP2U, LLC et al, Civil No. 2:12-cv-00294 (S.D. TX)*.

Mr. Raghavan indicated that Mo' Money is a good example of how bad tax preparation can exacerbate noncompliance. Mo' Money instructed its employees to routinely apply for refundable education credits. The Department of Justice's case turned on the fact that vast majority of Mo' Money consumers received education credits without corresponding IRS Form 1098's, Tuition Statements.

### Current Issues

A review of 2013 and 2014 fee disclosures from the City of Chicago reveal that many independent preparers continue to impose add-on fees for refund anticipation checks. It also reveals pricing peculiarities that suggest preparers might be disguising refund anticipation checks add-ons in purportedly neutral fee pricing. Specifically, high fees for items that are common to refund anticipation check consumers relative to other fees (i.e. earned income tax credit or child tax credit). These are matters the Illinois Attorney General is looking into.

*Chi Chi Wu*

Chi Chi Wu was a guest before the Task Force on June 25, 2015. She has been a staff attorney at National Consumer Law Center (NCLC) for over a decade. Chi Chi focuses on

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consumer credit issues at NCLC, including legislative, administrative, and other advocacy. Chi Chi's specialties include fair credit reporting, credit cards, refund anticipation loans, and medical debt. Before joining NCLC, Chi Chi worked in the Consumer Protection Division at the Massachusetts Attorney General's office and the Asian Outreach Unit of Greater Boston Legal Services. Chi Chi is a graduate of Harvard Law School and The Johns Hopkins University. Chi Chi is co-author of the legal manuals Fair Credit Reporting Act and Collection Actions, and a contributing author to Consumer Credit Regulation and Truth in Lending.

## **Mystery Shopper Program**

Ms. Wu discussed the 2008 mystery shopper program NCLC conducted in Pennsylvania and North Carolina for tax preparer businesses. NCLC was surprised by the fraud and incompetence found. For example, one paid tax preparer indicated a lack of knowledge as to how to report mutual income from a IRS Form 1099-D, and decided simply to omit it. NCLC also performed testing in 2010 and 2011 that revealed many problems with tax preparers, including issues with charitable deductions.

The most recent round of mystery shopper testing was conducted in 2015. The executive summary of this mystery shopper program report<sup>5</sup> states:

Advocacy groups in Florida and North Carolina conducted 29 “mystery shopper” tests of paid tax preparers. As with many previous studies of paid preparers, the results of the mystery shopper tests conducted this year uncovered serious problems in the tax preparation industry. It shows the dire need for regulation of paid tax preparers—and the costs to both taxpayers and the U.S. Treasury due to the lack of minimum standards. Testers used one of two scenarios—the Single Parent and the Graduate Student.

### *Single Parent Scenario*

The tester in this scenario was not entitled to claim the minor child because the child lived with the other parent for more than 50% of the time.

- 8 of the 15 preparers had the tester claim the child on the tester’s tax return, improperly inflating the tester’s refund and claiming an Earned Income Tax Credit (EITC) of \$2,523.
- 7 of these 8 preparers also appear to have knowingly provided incorrect information on an EITC-related form.

Preparers also gave the Single Parent testers questionable advice, such as telling the tester she should work out an arrangement with the father to take turns claiming the child in alternate years. The Single Parent scenario also involved \$800 in side income not reported on a W-2.

- 12 of the 15 preparers did not report the \$800 in side income.

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<sup>5</sup> Prepared In Error: Mystery Shoppers in Florida and North Carolina Uncover Serious Tax Preparer Problems, April 2015, National Consumer Law Center.

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## *Graduate Student Scenario*

The Graduate Student scenario involved a paid internship at a local nonprofit. All of the preparers properly reported the tester's income. However, preparers did make errors with this scenario.

- 10 of the 14 preparers did not properly use a Schedule C to report the income. This resulted in omitting nearly \$1,300 in self-employment tax.
- Of the 4 preparers who did use a Schedule C, 3 preparers took questionable deductions, including 1 preparer who made up \$9,562 in fictitious businesses expenses.

## *Overall Observations*

In total, there were documented inaccuracies in the vast majority of the tests.

- 27 out of 29 returns prepared for the mystery shopper tests contained an error. Thus, over 90% of the returns were inaccurate.

Other problematic issues observed include:

- Preparers who forged the signatures of other people or otherwise failed to properly note on the tax form that they were the paid preparer who had completed the form.
- The testers were unable to obtain estimates of tax preparation fees in some cases. In one case, the preparer appeared to vary the amount of the fee on the refund amount, which is contrary to IRS rules.
- Preparers who were unfamiliar with the tax preparation software or common tax forms, or behaved unprofessionally.

## **Model Act**

Ms. Wu noted that tax preparation is an important issue for consumers due to the *Loving v. IRS* decision. She indicated a need for U.S. Congress or individual states to pass legislation regulating paid preparers. In order to assist with this, NCLC prepared a model law, which is based in part on the IRS's program and on existing laws in Maryland, Oregon, and California. The model law requires licensing, certain levels of education, testing that mirrors the IRS's testing, and continuing education requirements. The law also requires certain disclosures of tax preparer fees and exempts CPAs, attorneys, Volunteer Income Tax Assistance volunteers, enrolled agents, and government employees. Ms. Wu noted that requiring licensure will assist in lowering the endemic nature of fraud and heightens the level of professionalism required for the industry as a whole. Although the IRS currently offers a voluntary credential for paid tax preparers, consumers are focused on obtaining refunds and saving money. She noted that although disclosure requirements and education of tax preparers are helpful, they do not get to the heart of the fraud issues. Fraud has increased due to the use of software in the industry as unqualified tax preparers simply "click through" software. Unfortunately, consumers are left to deal with an unqualified or fraudulent tax preparer.

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The Model Act's executive summary<sup>6</sup> states:

A tax return is one of the most critical financial events for many consumers during the year. Over half of these consumers rely on paid tax preparers, putting their financial lives in the hands of these practitioners. Yet there is no regulation for most tax preparers in the vast majority of states. There are no minimum educational, training, competency, or other standards. In 46 states, there are more regulatory requirements for hairdressers than tax preparers.

Because of this lack of regulation, incompetence and abuses by tax preparers have flourished over the years. Mystery shopper testing by consumer groups, other advocacy organizations, and government agencies has found frequent examples of this incompetency and outright fraud — a disturbingly high number, given the limited number of tests conducted. Some of the examples uncovered in this testing were:

- Intentional omission of income;
- Falsifying information to make the taxpayer eligible for various credits and deductions, such as charitable deductions, job-related or business expenses, and the Earned Income Tax Credit (EITC);
- Inability to properly deal with education-related credits and income;
- Misclassifying filing status; and
- Data entry errors resulting in incorrect refunds.

These numerous examples of fraud and incompetence, comprising a significant percentage of the preparers tested, shows that this problem is not isolated or the case of a few bad actors. Instead, it is an endemic problem and regulation is urgently needed to protect both taxpayers and public treasuries.

Another problem faced by taxpayers is the inability to comparison shop or predict how much tax preparation will cost them, because many tax preparers claim they cannot give a quote or give inaccurate ones. As a result of this lack of transparency, consumers face tax preparation fees that are very high, and sometimes inflated – up to \$400 or \$500 in some cases.

The IRS attempted to address fraud and improve preparer competency by developing a system to regulate tax preparers. However, in early 2013, this effort was blocked by a federal court, which invalidated the regulations as exceeding the IRS's statutory authority. This decision was upheld in February 2014 by the D.C. Court of Appeals. Thus, it is up to Congress or the states to institute a system of preparer regulation.

To assist states toward this goal, this report includes the Model Individual Tax Preparer Regulation Act, which a state legislature can enact for the regulation of tax preparers, based in large part on three of the four existing state laws, as well as the IRS regulations.

The Model Act requires paid tax preparers to:

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<sup>6</sup> Riddled Returns: How Errors and Fraud By Paid Tax Preparers Put Consumers at Risk and What States Can Do, March 2014, National Consumer Law Center.

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- Obtain a registration unless they fit into one of the handful of exceptions,
- Pass a basic competency exam,
- Have 60 hours of initial education and 15 hours per year of continuing education, and
- Provide a standardized disclosure of their fees.

For consumers, an incorrectly prepared tax return can lead to dire economic consequences or even criminal sanctions. This is especially true for low-income EITC recipients, of whom over 60% — or 16 million families — pay for tax preparation. For these consumers, especially EITC recipients, their refund is the single largest sum of money that they will receive during the entire year. Passage of the Model Act will allow these consumers to be confident that the tax preparer that they rely upon has the basic skills and knowledge needed to prepare their tax returns correctly.

### *Douglas Blackstone*

Douglas Blackstone is an attorney and Executive Director of the Maryland State Board of Individual Tax Preparers. He graduated in May of 2008 from the University of Baltimore Law School and is a member of the District of Columbia Bar. Mr. Blackstone lived in South Africa for several years, where he completed course work for an MBA at the University of South Africa, before returning to the U.S. in 1997. Douglas has been Executive Director of the Maryland Board of Individual Tax preparers since its inception in 2011 and previously worked in the legislative compliance division of the Maryland Motor Vehicle Administration. He spoke to the Task Force on July 30, 2015.

### **Maryland Registration for Individual Tax Preparers**

The following individuals are exempt from Maryland registration: (1) a current, active CPA registered by Maryland or any other State; (2) an individual in good standing and admitted to practice law in the State or in another state, (a tax attorney); (3) an individual employed by a local, state, or federal governmental agency but only in performance of official duties; (4) an individual enrolled to practice before the Internal Revenue Service (an Enrolled Agent); (5) an individual serving as an employee of or assistant to an individual tax preparer or an individual exempted under this subsection in the performance of official duties for the individual tax preparer or the individual exempted in 1 to 4 above.

For employees, it depends to what extent the employee is taking responsibility for the return. If the employee prepares substantially all of the return and takes responsibility for its content, for example, by signing the return, then the employee must register. If the employer, rather, takes responsibility for the content of the return, then the employee may fall under the exemption.

Maryland registration is not dependent on the preparer's personal residence, but whether the preparer's business includes preparing Maryland returns - either in state or out of state. If an out of state preparer is preparing Maryland returns as a significant part of his/her business, then he or she must register. However, those out of state tax professionals who prepare an occasional Maryland return for a walk-in client may not be required to register with Maryland.

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Once the Board receives PTIN documentation, the Board's administration releases the application, and the tax preparer receives his or her registration number and card in the mail, usually within 5-10 business days.

The Board has adopted CPE regulations and a code of professional conduct. Maryland law requires 16 CPE hours every 2 years from the date of registration, as a condition of renewal. (21-309(a)). Federal CPE requirements may likely be used to satisfy 12 Maryland hours. An additional four hours that are Maryland state tax related are required.

The following are prohibited acts:

- § 21-401. Practice without registration prohibited.
- § 21-402. False representations prohibited.
- § 21-403. Maintenance of records; and
- § 21-404. Violation is an unfair or deceptive trade practice; remedies.

Prior to rendering individual tax preparation services, an individual tax preparer (ITP) shall disclose to the customer, in writing:

- The ITP's name, address & telephone number;
- That the ITP is not a CPA, an enrolled agent, or a tax attorney;
- Services that the ITP is qualified to provide;
- The ITP's education & training, including examinations taken & successfully passed.

Any disclosure required under § 21-403(b) shall be provided to a customer: (i) At an initial meeting between the ITP and the customer; and If the ITP maintains a website, on the website.

### *Richard Ernst*

Richard S. Ernst was appointed Deputy Commissioner for Professional Responsibility for the New York State Department of Taxation and Finance in March 2013. In that capacity, he is responsible for the registration, training and discipline of individuals that prepare New York State tax returns. From January 2011 through March 2013, Mr. Ernst was the Deputy Commissioner for Criminal Enforcement for the New York State Department of Taxation and Finance where he was responsible for the supervision of attorneys, auditors and investigators involved in the investigation of criminal violations of New York State tax law. Immediately prior to joining the Department, Mr. Ernst spent twenty three years at the Office of the New York State Attorney General where he held the titles of Deputy Section Chief for Financial Crimes, Senior Investigative Counsel and Deputy Bureau Chief in the Criminal Prosecutions Bureau. Mr. Ernst also served as an Assistant District Attorney in the Office of the Albany County District Attorney. Mr. Ernst earned his Juris Doctor from Albany Law School in 1981. Mr. Ernst earned a Bachelor of Science degree *cum laude* from Brooklyn College in 1978. He spoke to the Task Force on July 30, 2015.



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## **Registration**

Prior to 2010, New York State regulated many other professions, including hair stylists and nail specialists. Tax return preparers were not regulated by the state. The legislature called for a task force to study regulation of tax return preparers. Tax return preparers that were “doing the right thing” were aware of unethical tax preparers in their community. To fight the problem of unethical tax preparers required federal, state and local agencies to work together.

Starting in 2010, certain tax return preparers are required to register with New York State. Each tax return preparer who prepares at least one return in a calendar year for compensation; and each facilitator who facilitates the making of a RAL or a RAC must annually register with the Department. Attorneys, public accountants, CPAs and enrolled agents and their employees are exempt from the registration requirements. Also excluded are individuals who only prepare their employer’s businesses or partnership's returns, and employees of a tax return preparation business who provides only clerical services.

The IRS has a separate registration program for tax return preparers. You must register with New York State and separately with the IRS. Each preparer needs to first create an Individual Service Account and then login to the account to access the Tax Preparer Registration Program and register as a preparer or facilitator. To learn how to create an Individual Service Account, please go to <http://www.tax.ny.gov/online/ind.htm>. If an applicant has already created a Tax Professional Online Services Account using a social security number, he or she can access the Tax Preparer Registration Program directly through their existing account and register as a preparer or facilitator. Applicants must now register with NYS for all tax types that they prepare. They must be sure to register as a tax preparer prior to filing any tax returns in calendar year 2016, to avoid penalties.

A commercial tax return preparer is a tax return preparer who: (1) prepared ten or more returns for compensation in the preceding calendar year and will prepare at least one return for compensation during the current calendar year; or (2) prepared fewer than ten returns in the preceding calendar year but will prepare ten or more returns for the current calendar year. Each commercial tax return preparer must electronically pay a \$100 fee. This fee can be paid through their Individual Service Account.

The following are not required to register: CPAs, Enrolled Agents, Public Accountants and Attorneys and their supervised employees. The following are required to register but are not required to pay any fees: CPAs, Enrolled Agents, Public Accountants and Attorneys who facilitate RALS or RACS and any individual who prepares at least 1 but less than 10 returns for compensation within a calendar year. The following are required to register and pay fees: any individual who prepares 10 or more returns for compensation within a calendar year.

Applicants must make certifications regarding child support obligations and prior criminal convictions and sanctions. Applicants will need to certify that they either: (1) do not have a child support obligation; or (2) are not more than four months in arrears. Applicants who are more than 4 months in arrears in their child support payments can still register as a tax return preparer if (a) they are under a payment agreement to pay their child support obligations; or (b) they are



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contesting the amount of child support that they are required to pay in a court of competent jurisdiction; or (c) they are receiving social service benefits.

If an applicant has been convicted of a misdemeanor or felony or within the last five years or has been disciplined or administratively sanctioned he or she will need to provide additional information about the conviction or sanction.

Applicants must affirm that they are 18 years of age or older, and have a high school diploma or its equivalent. If an applicant has outstanding dishonored payments from prior registration years he or she will not be eligible to register. If a registration in a prior year has been suspended, the individual will not be able to register without contacting the Department. Applicants must be in compliance with federal, state and local tax filing obligations. If an applicant was required to take New York State tax preparer education during 2016; he or she must complete the coursework prior to registering for 2017.

The following continuing education requirements apply:

If you:	then you:
are a commercial preparer who prepared <b>ten or more</b> New York State personal income tax returns during the years 2011, 2012, and 2013	must take <b>four hours</b> of continuing education coursework by the end of December 2015.
are a commercial preparer who prepared <b>fewer than ten</b> New York State personal income tax returns during the years 2011, 2012, and 2013	you must take: <ul style="list-style-type: none"><li>• <b>16 hours</b> of continuing education coursework by the end of December 2015, and</li><li>• <b>four hours</b> of continuing education coursework each year after that.</li></ul>
do not meet the definition of a commercial preparer	are not required to take any courses. You may, however, sign up for the 16-hour course.

## **E-File Mandate**

A preparer must e-file all individual income tax returns and extensions, all fiduciary returns, and all partnership returns and extensions if the preparer: was subject to the mandate in a prior year; or meets both of the following conditions: (1) the preparer or the preparer's firm prepared authorized tax documents for more than ten different taxpayers in a prior calendar year; and (2) uses tax software to prepare one or more of these tax documents in the current calendar year.

An authorized document includes any document that the Tax Department requires to be e-filed. If the document can't be e-filed, it does not have to be counted to determine if the preparer meets the 10 taxpayer threshold. Preparers subject to the e-file mandate must continue to e-file all of their clients' authorized tax documents in all future years regardless of the number of returns prepared or number of taxpayers for which an authorized tax document was prepared.

# Illinois Tax Return Preparation Task Force Report

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A tax preparer may be subject to a penalty if they are subject to the e-file mandate and fail to e-file a client's return. If they have reasonable cause not to e-file, they must maintain adequate documentation. The department will make reasonable-cause determinations on a case-by-case basis consistent with the current reasonable-cause standards.

The department will take the following circumstances into account in determining whether reasonable cause exists:

- whether the preparer's New York State approved e-file software supports e-filing of a return;
- whether the return was e-filed, but rejected for a condition that can't be identified or resolved;
- whether there existed an extended Internet outage at the preparer's place of business;
- any other cause that appears to a person of ordinary prudence and intelligence as a reasonable cause for the failure to e-file and that clearly indicates an absence of willful intent to disobey the e-file mandate; and
- a preparer's overall compliance with the New York State e-file mandate.

While the department will make reasonable-cause determinations on a case-by-case basis, the following facts and circumstances will never be considered reasonable-cause:

- a client's desire to opt out of e-filing;
- a preparer's failure to obtain an EFIN;
- ignorance of the law; and
- Reluctance to provide bank account information electronically.

## **Consumer Bill of Rights & RALs**

Article 24-C of the New York State General Business Law contains the Consumer Bill of Rights Regarding Tax Return Preparers and requirements for tax preparers to follow. This statute does not pertain to New York City tax return preparers. Tax preparers, except those listed as exempt, are subject to the following requirements under the General Business Law, including, a requirement to provide contact information and a requirement to distribute Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*. (Publication 135 can be downloaded at: <http://www.tax.ny.gov/pdf/publications/income/pub135.pdf>).

The following individuals are exempt from this requirement: (1) an officer or employee of a corporation that prepares income tax returns relating to such corporation or business enterprise; (2) an attorney at law and their employees; (3) a certified public accountant licensed by one or more of the states or jurisdictions of the United States, and their employees; (4) a public accountant licensed and their employees; (5) an employee of a governmental unit, agency or instrumentality who advises or assists in the preparation of income tax returns in the performance of his or her official duties; and (6) an IRS enrolled agent.

All tax preparers, including those listed as exempt, are subject to the following requirements concerning RALs: Tax preparers are prohibited from advertising RALs as a refund. Any

## Illinois Tax Return Preparation Task Force Report

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advertisement by a tax preparer that mentions RALs must state conspicuously that a RAL is in fact a loan and that a fee or interest will be charged by the lending institution. The lending institution must be identified in the advertisement. Before a taxpayer enters into a RAL, the tax preparer facilitating the loan must provide a disclosure statement to the taxpayer, in writing and in at least 14-point type.

All tax preparers, including those listed as exempt, are subject to the following requirements concerning RALs: (1) A tax preparer is obligated to complete the required disclosure accurately with all relevant information for each taxpayer. In addition, the completed disclosure form must be signed by the taxpayer before he or she enters into a RAL; and (2) Violation can lead to a civil penalty of not less than \$250 but not more than \$500 for the first violation and, for each succeeding violation, a civil penalty of not less than \$500 but not more than \$750.

As of January 1 of each year, each New York City tax preparer shall give to each consumer, free of charge, a current, legible copy of the consumer bill of rights regarding tax preparers prior to any discussion with the consumer. Apart from the listed RAL requirements and the accompanying penalties, these provisions shall not apply to:

- An officer or employee of a corporation or business enterprise who, in his or her capacity as such, advises or assists in the preparation of income tax returns relating to such corporation or business enterprise.
- An attorney at law who advises or assists in the preparation of income tax returns in the practice of law and the employees thereof.
- A fiduciary and the employees thereof who advise or assist in the preparation of income tax returns on behalf of the fiduciary estate, the testator, trustee, grantor or beneficiaries thereof.
- A certified public accountant and the employees thereof.
- A public accountant licensed pursuant to the education law and the employees thereof.
- An employee of a governmental unit, agency or instrumentality who advises or assists in the preparation of income tax returns in the performance of his or her official duties.
- An agent enrolled to practice before the internal revenue service pursuant to section 10.4 of subpart A of part ten of title thirty-one of the code of federal regulations.

The flier shall be in a form which is easily reproducible by photocopy machine and shall contain information including, but not limited to: explanations of some of the commonly offered services and industry jargon, and basic information on what a tax preparer is and is not required to do for a consumer, such as:

- the preparer's responsibility to sign a return
- that tax preparers are not required to accompany a consumer to an audit (the company may have a policy to do so)
- the phone number for the New York City Department of Consumer Affairs for information and complaints.

# Illinois Tax Return Preparation Task Force Report

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A statement that the consumer has the right to receive the following information from the tax preparer prior to becoming obligated to compensate such tax preparer for services rendered in connection with filing such consumer's income tax return with the appropriate governmental agencies: a written list of the refund and tax preparation services offered by the tax preparer, and a written estimate of the total costs to the consumer for each refund and tax preparation service offered by the tax preparer. Such an estimate shall include basic filing fees, interest rates, refund anticipation loan processing fees, and any other related fees or charges.

Concerning RALs, all tax preparers must give the client a printed, single sheet explaining:

- how much their expected tax refund is;
- how much the bank will charge in fees for the RAL;
- the approximate RAL loan amount the client will receive;
- the interest rate, expressed as the estimated annual percentage rate based on the amount of the loan;
- time the loan will be outstanding;
- the approximate date the client will get their loan money if they take out a RAL;
- the approximate date the client would get their refund if they did not take out a RAL;
- that the preparer must orally explain a RAL in a language the client understands.

Any person, partnership, corporation or other business entity who violates any provision of this subchapter or any of the regulations promulgated hereunder shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars for the first violation and for each succeeding violation a civil penalty of not less than five hundred dollars nor more than seven hundred fifty dollars.

## **Criminal Statutes & Discipline**

The Tax Fraud Act - Tax Law §1801 holds the following as criminal: knowingly filing a return containing materially false or fraudulent information; knowingly supplies or submits materially false or fraudulent information in connection with any return, audit, investigation, or proceeding; and engages in any scheme to defraud the state or a political subdivision of the state or a government instrumentality within the state by false or fraudulent pretenses.

Tax Preparer Registration §1833 states that a commercial tax return preparer who, willfully and with the intent to evade the requirements of the tax law, fails to sign his or her name to any tax return that requires a signature, or fails to register as required by section thirty-two, will be guilty of a class A misdemeanor.

The following are grounds for denial of registration: noncompliance with tax obligations, criminal convictions, adverse disciplinary actions, willful violation of the Tax Law, failure to comply with child support obligations, fraud or deceit as a preparer, dishonest or unscrupulous conduct, failure to register or pay registration fee, failure to satisfy IRS requirements, failure to satisfy continuing education and competency requirements, and failure to meet minimum age requirements.

# Illinois Tax Return Preparation Task Force Report

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Willfully, recklessly or with gross incompetence is ground for discipline and includes:

- failing to provide the Department with available non-privileged records;
- failing to notify the Department where unavailable records can be located;
- interfering with the department's attempt to obtain records;
- failing to advise clients of known omissions;
- failing to promptly dispose of pending matters;
- assisting persons whose registration has been refused, cancelled, or suspended;
- charging an unconscionable fee;
- taking acknowledgments, administering oaths, certifying papers, or performing any official act as a notary public with respect to any matter administered by the department and for which he or she is employed as a tax return preparer ;
- endorsing or otherwise negotiating a check or other form of payment issued to a client by the government in respect to a federal, state or local tax refund;
- failing to return client records;
- being involved in a matter that would cause a conflict of interest without getting a waiver from the parties;
- submitting returns that the preparer knows lacks a reasonable basis; or involves a reckless or intentional disregard of rules or regulations;
- taking a frivolous position on prepared returns;
- advising clients to submit documents to delay the administration of the tax laws;
- failing to advise clients of potential penalties;
- relying on information furnished by client;
- if information that a client provides appears to be incorrect, inconsistent with facts, or incomplete; you must make reasonable inquiries concerning the information;
- failing to supervise;
- failing to comply with the requirements for written advice; and
- failing to comply with solicitation and advertising standards.

Failing to use due diligence when preparing returns is also grounds for discipline. In connection with any return prepared by the tax return preparer, the preparer must exercise due diligence:

- in preparing or assisting in the preparing, approving, and filing of tax returns, documents, affidavits, and other papers relating to the return;
- in determining the correctness of oral or written representations made by the preparer regarding the return to the department; and
- in determining the correctness of oral or written representations made by the preparer to clients with reference to any matter administered by the department in connection with the return.

A tax return preparer will be presumed to have exercised due diligence if the preparer relies on the work product of another person and the preparer used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the preparer and the person.

# Illinois Tax Return Preparation Task Force Report

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To claim the Federal Earned Income Tax Credit, a tax preparer must complete Form 8867 and submit to IRS and complete EITC Worksheet in Publication 596. The preparer should keep: Form 8867, EITC worksheet, copy of documents provided by the taxpayer, and record of when and how you received the information. Failure to comply with these requirements is grounds for discipline.

Incompetent or disreputable conduct, including the following, is grounds for discipline:

- criminal convictions
- adverse disciplinary actions
- false or misleading information or submissions
- willful noncompliance with tax obligations
- assisting tax evasion
- misappropriating client funds
- improperly influencing official actions
- aiding the practice by non-registered preparers
- contemptuous conduct
- issuing false and misleading opinions
- willfully failing to sign a return
- disclosing confidential information
- willfully violating the tax law
- failing to register, pay a required fee, or complete educational requirements
- making false or misleading representations

A violation of a best practice will not by itself constitute an act of misconduct by the preparer sufficient to support a disciplinary action. Preparers should communicate with their clients, apply law to the facts, advise their client regarding the basis for the conclusions reached, and act with fairness and integrity when practicing before the department.

The right to prepare or file New York State tax returns can be denied to the preparer. Limitations or conditions can be imposed on the preparer's ability to prepare or file New York tax returns in the future. A notice of proposed cancellation or suspension of registration, a notice of proposed refusal to register, or a notice of other disciplinary action imposed on a tax return preparer will be sent electronically to the tax return preparer's online services account. It is critical that the email address listed on the preparer's online service account is one that the preparer regularly checks. For a tax return preparer who does not have an online services account, the notice may be sent by certified or registered mail to the tax return preparer at his or her last known address reflected on the application for registration as a tax return preparer. Similarly, it is critical that the address listed on the preparer's application for registration is one where the preparer regularly receives mail. If no application is on file, the notice will be sent to the last known address the department has for the tax return preparer.

The notification will outline the basis for disciplinary action, inform the recipient that such action may be protested through a hearing process, and advise that a petition for such protest must be filed within a specified number of days after the date of the notice to either the Division of Tax Appeals or the Bureau of Conciliation and Mediation Services.

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Unless acts involving falsity or fraud are at issue, a notice of proposed disciplinary action against a tax return preparer must be issued within five years from the date of the act or omission which formed the basis for such disciplinary action. Where acts involving falsity or fraud are at issue, such notices may be issued at any time.

The following are penalty assessments:

- Violation of §32(f)(1) relating to RALs and RACs: \$500 for each violation in addition to any other penalties.
- Failure to register or re-register by a tax preparer or facilitator: \$250 with a potential additional \$500 per month (can be abated if cured within 90 days).
- Failure to pay the required registration fee by a commercial tax preparer: \$50 for every return prepared within the calendar year with a maximum fee of \$5,000 (can be abated if cured within 90 days).
- Failure to sign a return/RAL or RAC: \$250 for each failure. The maximum penalty in a calendar year is \$10,000. If the preparer or facilitator has been fined in a previous calendar year, the penalty is \$500 for each future failure with no annual cap.
- Failure by a preparer or facilitator to include their unique identification number: \$100 per failure. Maximum penalty in a calendar year is \$2,500. If a preparer/facilitator has been penalized for a preceding calendar year, the penalty will be \$250 per failure with no annual cap.
- Employing a non-exempt individual that is not registered: \$500 per occurrence.
- Charging a separate fee to e-file a New York return: \$500 for the first violation and \$1,000 for each subsequent violation.
- Failure of tax return preparer to furnish a copy of a return to a taxpayer: \$50 per failure. The maximum penalty during any calendar year shall not exceed \$25,000.
- Failure to electronically file returns with the Department: \$50 per return.
- Taking a position on any return or claim for refund where there was not a reasonable belief that the position was more likely than not to be proper: \$1,000 with respect to such return or claim.
- Taking a position based upon a willful attempt or is due to a reckless or intentional disregard of rules or regulations in order to understate a liability: \$5,000 with respect to such return or claim.

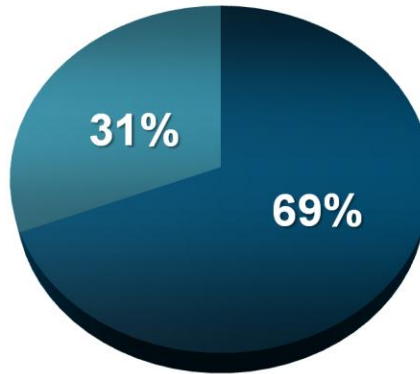


Mr. Ernst also provided the following information:

## Preparers Influence Taxpayer Behavior

### Personal Income Tax Returns

- paid preparers (6.7 million)
- self prepared (3 million)

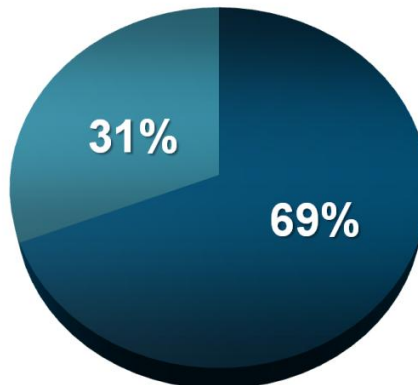


New York State Department of Taxation and Finance 2

## Preparers Influence Taxpayer Behavior

### Personal Income Tax Returns

- paid preparers (6.7 million)
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New York State Department of Taxation and Finance 2

### *Howard Moyes*

Howard Moyes was appointed Executive Director of the Oregon Board of Tax Practitioners on June 1, 2015 and spoke to the Task Force on July 30, 2015. Mr. Moyes has more than 20 years of senior leadership experience in state government and nonprofit organizations, including 13 years with the Florida Department of Revenue. Howard has a Master's degree in Public Management and Administration from the University of Maryland and a Bachelor's degree in Political Science from the University of California, San Diego.

### **Oregon Board of Tax Practitioners**

The seven-member Board of Tax Practitioners protects Oregon consumers by ensuring Oregon tax practitioners are competent and ethical in their professional activities. Six members are required to be Licensed Tax Consultants. The seventh is a public member. Members are



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appointed by the Governor and serve three-year terms. The Board elects a Chair and vice-Chair, who serve one-year terms. The Board has the following staff: Executive director, compliance specialist, exam and education coordinator, and licensing specialist/admin specialist. The Board has an annual budget of approximately \$550,000, funded entirely by license fees, registration fees, exam fees, and enforcement actions.

Annual licensure applies to any individual who prepares or advises in the preparation of personal income tax returns for another and for valuable consideration. The following exemptions apply: attorneys, certified public accountants, public accountants, fiduciaries, and employees of such firms and individuals. There is also an annual business registration, in which any business or sole proprietorship that prepares or advises in the preparation of personal income tax returns for another and for valuable consideration. The business must designate and report the authorized individual who is responsible for tax return preparation activities.

The Board receives the following numbers of complaints:

2015 YTD	25
2014	32
2013	52
2012	34
2011	29

Information regarding these complaints is attached to the report as **Exhibit 2**.

# Illinois Tax Return Preparation Task Force Report

## Oregon Board of Tax Practitioners - 2015 Licensing Requirements Summary

Type of License		Education	Experience	Testing	CE	License Requirements	Fees	# of Licensees
Licensed Tax Preparer		HS diploma or equivalent. Complete 80-hour basic tax course	N/A	Pass state-administered LTP exam with 75% or higher	30 hours annually with at least 2 hours of ethics	Must work under supervision of LTC	\$50 exam fee. \$50 initial license. \$70 annual renewal*	1,575
Licensed Tax Consultant	If not LTP	HS diploma or equivalent. 80-hour basic tax course or equivalent	1,100 hours of tax preparation experience during two of past five years	Pass state-administered LTC exam with 75% or higher	30 hours annually with at least 2 hours of ethics	None	\$85 exam fee. \$85 initial license. \$85 annual renewal*	1,822
	If LTP	HS diploma or equivalent. 15 hours of CE within past year	1,100 hours of tax preparation experience during two of past five years	Pass state-administered LTC exam with 75% or higher				
	If Enrolled Agent	HS diploma or equivalent	360 hours of tax preparation with copy of current EA card	Pass state-administered LTC (Oregon only) exam with 75% or higher				
Tax Business Registration	Main Office					Must be under management and supervision of LTC	\$100 business registration*	1,129
	Branch Office						\$20 per branch	243

\* Combination annual business registration and practitioner (LTP or LTC) license renewal is \$145

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## *Celeste Heritage*

Celeste Heritage is President of Advocation Strategies, Inc., a lobbying/association management firm located in Sacramento, CA. For the last 18 years Ms. Heritage has overseen all administrative aspects concerning the operations of the California Tax Education Council (CTEC) and its more than \$1.3 million annual budget. CTEC currently registers approximately 41,000 tax preparers annually in the state of California. Ms. Heritage interfaces with well over 100 schools providing tax education; she has helped to develop and maintain a public outreach program to educate California taxpayers regarding the CTEC program; and, she continues working with the California legislature to both strengthen and improve the Tax Preparer Act, which established CTEC in 1997. Ms. Heritage spoke to the Task Force on July 30, 2015.

### **California Tax Education Council**

The responsibility for approving tax schools was transferred by the Legislature and the Governor to the California Tax Education Council effective July 1, 1997. The Council is a private industry association made up of 14 appointees from non-profit tax preparer associations and for profit corporations. Representatives to the Council are appointed. In addition to approving providers of tax education, the Council is charged with providing a list of approved curriculum providers, verifying the required tax education and insuring that preparers provide valid bond information before issuing a statement of completion/compliance to the preparer.

Any person who for a fee, assists with or prepares a State or Federal tax return, or assumes responsibility for such a return, or who offers these services is required to comply with the Tax Preparers Act, Section 22251 of the California Business and Professions Code. Generally speaking, CPAs, attorneys, enrolled agents and anyone employed by these individuals are exempt from the Act. Those living outside of California can prepare California tax returns. The law is limited to overseeing tax preparers who are preparing state and federal tax returns for a fee within the State of California. Out-of-state tax preparers are not obligated to meet California requirements.

In order to become a registered Tax Preparer in California, an applicant must find a CTEC approved curriculum provider, successfully complete a 60-hour (45 hours Federal and 15 hours State) course approved for qualifying education, obtain a PTIN (Preparer Tax Identification Number) from the IRS, purchase a \$5,000 tax preparer bond from a insurance/surety agent, and apply to obtain a certificate of completion from CTEC. A "qualifying education" tax course meets requirements when not less than 60 hours of instruction is taught in basic personal income tax law, theory, and practice by an approved curriculum provider. Of the required 60 hours, 45 hours shall be concerned with federal tax curriculum and 15 hours shall be concerned with state tax curriculum.

Once registered, the individual must complete 20 hours (10 hours of federal tax law topics, 3 hours of tax law updates, 2 hours of ethics and 5 hours of state) of continuing education by the upcoming October 31st. The individual may begin preparing tax returns after he or she complete the required education, obtain the bond and are registered with CTEC.

# Illinois Tax Return Preparation Task Force Report

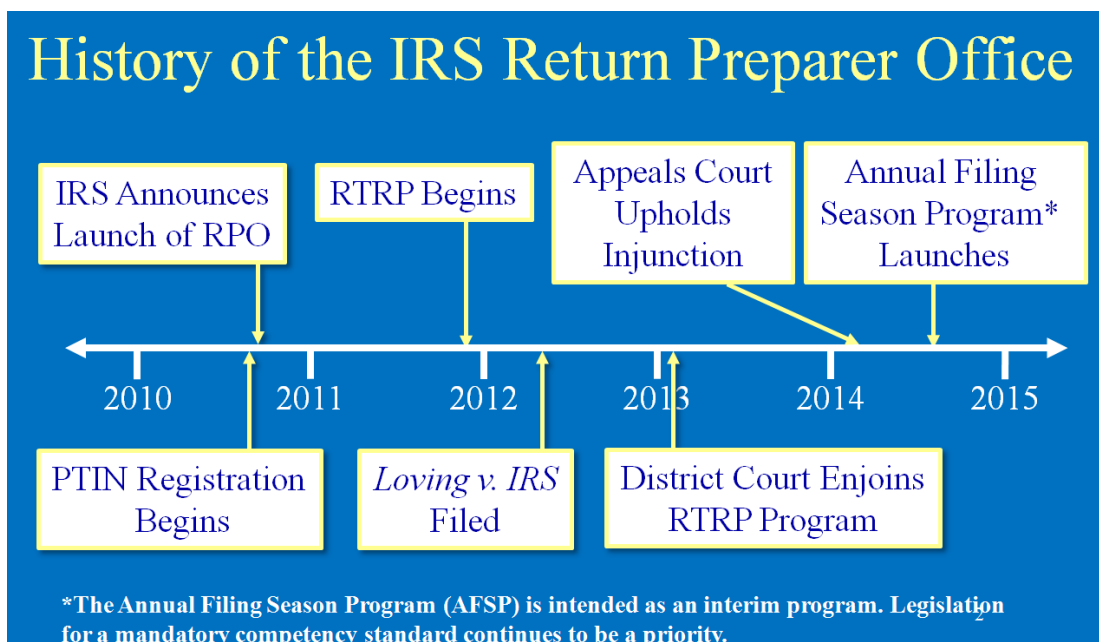
CTEC is authorized to consider "a minimum of two recent years experience in the preparation of personal income tax returns" to determine if an individual has achieved "the equivalent of the required qualifying education". Those who prepared taxes in violation of the statute may not use such time to qualify for this exception. This means that anyone who has had a CPA, EA, or attorney license for the last two years; anyone who was employed by one of those three for the last two years; or anyone moving to CA from out of state with 2 years experience, may apply to receive an exemption from have to take the full 60 hour qualifying course.

## *Carol Campbell*

Carol A. Campbell was named director of the IRS Return Preparer Office in August 2012. Her office handles the preparer tax identification number (PTIN) program and registration of almost 700,000 tax return preparers and other tax professionals with the IRS, as well as oversight of the Annual Filing Season Program and all enrollment programs (enrolled agent, enrolled retirement plan agent, and enrolled actuary). Carol is a graduate of the University of Virginia and subsequently earned a law degree from the College of William and Mary. After law school, Carol worked for the U.S. Department of Labor, and then joined the IRS in 1991. Before becoming RPO Director, Carol was a senior docket attorney in Chief Counsel, Counsel to the National Taxpayer Advocate, Division Counsel for Wage and Investment, and Deputy Chief of Staff for the IRS Commissioner. Ms. Campbell spoke with the Task Force on August 20, 2015

### **IRS Return Preparer Oversight**

Ms. Campbell reviewed the following history of the IRS Return Preparer Office:



Beginning in 2009, the IRS focused on the fact that between tax software and paid tax preparers, approximately 80% of tax returns were prepared with paid assistance, yet there were

## Illinois Tax Return Preparation Task Force Report

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no minimum competency standards for such paid individuals. The IRS determined that the public and tax preparation industry would be best served by a regulatory process for paid tax preparers, setting basic requirements for paid preparers who are not enrolled agents, CPAs, or attorneys. This included a competency examination and continuing professional education. Accordingly, in 2010, the IRS established the Registered Tax Return Preparer program. Additionally, PTIN registrations were utilized beginning in 2010.

On January 18, 2013, the *Loving v. IRS* opinion was issued enjoining the IRS from mandatory education and competency testing for tax return preparers. The opinion stated that the IRS did not have the statutory authority to create mandatory requirements, however, the court did not opine as to whether the regulations were positive or negative. The *Loving* opinion did not impact the ability of the IRS to require PTINs.

In light of the *Loving* case, the IRS decided to build on voluntary continuing education requirements for paid tax preparers. The IRS encourages paid tax preparers to utilize the enrolled agent credential and participate in the Annual Filing Season Program.

### **Enrolled Agent Credential & Annual Filing Season Program**

Ms. Campbell reviewed the IRS Return Preparer categories. The IRS offers two voluntary programs: (1) *Enrolled Agent Credential*: an elite tax professional status with unlimited practice rights; and (2) *Annual Filing Season Program*: promotes filing season readiness and federal tax law knowledge through continuing education.

The enrolled agent credential requires a three part Special Enrollment Examination (or certain IRS experience) and 72 hours of continuing education every three years. This credential permits unlimited practice rights before the IRS. An enrolled agent is issued certificate and a three year enrollment card.

The Annual Filing Season Program requires 18 (or 15) hours of specific types of Continuing Education from IRS-approved providers per year. Participants consent to Circular 230 subpart B and section 10.51. Additionally, the program permits limited practice rights before the IRS. The participant is issued an AFSP Record of Completion. Nearly 44,000 tax return preparers participated in the Annual Filing Season Program in its first year. The IRS would like to see all 400,000 uncredentialed preparers either obtain the enrolled agent credential or at least commit to participation in the Annual Filing Season Program

### **Directory of Federal Tax Return Preparers with Credentials and Select Qualifications**

The IRS also maintains a Directory of Federal Tax Return Preparers with Credentials and Select Qualifications. This includes attorneys, CPAs, enrolled agents, enrolled retirement plan agents, enrolled actuaries, and Annual Filing Season Program participants with active PTINs. The directory contains the individual's name, city, state, zip, credential and/or Annual Filing Season Program participation. As of June 15, 2015, there were 151,440 searches of the Directory.

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## Representing Clients

Beginning Jan. 1, 2016, rules about who may represent clients before the IRS will change. Attorneys, certified public accountants, and enrolled agents will continue to have full representation rights for all clients before all IRS offices.

Annual Filing Season Program Record of Completion holders will have limited representation rights, meaning they can represent clients whose returns they prepare and sign, but only before examination, customer service representatives, and the Taxpayer Advocate Service. (To have limited representation rights, you must participate both in the year of return preparation and the year of representation.) Other tax return preparers who do not participate in the Annual Filing Season Program will not be permitted to represent any clients before the IRS for tax returns and claims for refund prepared and signed after Dec. 31, 2015.

The IRS remains committed to the principle that all persons who prepare federal tax returns for compensation should be required to establish minimal competency and take annual continuing education training. The IRS will continue to pursue the necessary legislative authority to advance this goal. Taxpayers deserve top-quality and ethical service from all tax professionals.

### *Center for Economic Progress*

On August 20, 2015, Eric Sternberg, Counsel for the Center for Economic Progress, spoke to the Task Force. On September 23, 2015, Paul Harrison for the Center spoke as well.

Eric Sternberg is a staff attorney with the Center for Economic Progress Low Income Tax Clinic. He has been with the Tax Clinic since 2012 after graduating from Chicago-Kent College of Law and has represented hundreds of clients in tax controversy matters before the IRS and Illinois Department of Revenue. He is currently the Chair of the Chicago Bar Association's YLS Federal Taxation Committee.

Paul Harrison, EA, is CEP's Tax Clinic Director, and joined CEP in September, 2012, with several years of experience representing low-income taxpayers in controversies and tax disputes. Paul moved to Chicago from Richmond, Virginia, where he served as the Clinic Coordinator for six years for the Community Tax Law Project (founded by Nina Olsen, the current National Taxpayer Advocate). Previously, he worked for seven years at Pine Tree Legal Assistance in Bangor, Maine, five of which as Clinic Coordinator. Paul has represented clients before the IRS and IRS Counsel, presented at multiple ABA and LITC conferences, and written extensively. He is an Enrolled Agent with degrees from Harvard University, St. Louis University, and Rocheville University. He is a Fellow of the National Tax Practice Institute and is currently pursuing a JD degree at Northwestern California University School of Law.

**The Center submitted the following statement to the Task Force at the August 20, 2015 meeting:**

The Center for Economic Progress (CEP) helps low-income, working families as a trusted provider of tax and financial services. Everything we do, from direct service to informing public policy, improves the financial stability of those we serve. Consistent with our mission,

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CEP operates the largest free tax-preparation program in the Midwest serving approximately 20,000 Illinois taxpayers each year. We also provide financial coaching training and support for low-income taxpayers, and, through our Tax Clinic, we provide low-income taxpayers with consultation on state and federal tax matters and with representation in tax controversies with the IRS and IDOR. Our Clinic annually represents approximately 300 taxpayers and provides advice and consultation to another 2,500 taxpayers.

CEP's Tax Clinic is a Low Income Taxpayer Clinic funded, in part, by the federal government under IRC § 7526. In 2015, there are roughly 140 such clinics in the nation, and four of them are in Illinois. Clinic clients, by federal statute, are taxpayers whose incomes are at or below 250% of the federal poverty guidelines for their family-size. Many such taxpayers are immigrants for whom English is not their first language.

Many of our clients in both our Tax Services and Tax Clinic programs are attempting to recover from financial difficulties caused by incorrectly-prepared tax returns. In fact, we offer eight different occasions each year outside of the regular tax-filing season, called Money Action Days, during which taxpayers can address their problems caused by improperly or fraudulently filed tax returns. Over 400 taxpayers each year take advantage of CEP's Money Action Days to correct errors that have been made on tax returns.

The Commission has appropriately asked how serious the problem of unregulated tax return preparers is in Illinois. The IRS lists "Return Preparer Fraud" as one of its *Dirty Dozen* of common tax scams for taxpayers to avoid. [www.irs.gov.] Additionally, three other items – identity theft, inflated refund claims, and falsifying income to claim credits – are among the most common indices of abusive and incompetent return preparers. The National Taxpayer Advocate has listed unregulated tax return preparers as among the most serious problems facing taxpayers. [NTA *Annual Report to Congress*, 2007]

It is CEP's position that a state regulatory framework for the identification of reliable, competent tax return preparers is the only way to meaningfully protect Illinois taxpayers. We are mindful of the budget constraints that are associated with any new regulatory framework, and we do not take these constraints lightly. The following experiences represent a small glimpse into the enormous and unnecessary expenditures of both time and money that could be avoided with proper regulation.

Every year at our tax sites we have clients who are married, yet attempt to file as single or head of household. Many respond not knowing that it is illegal to do so. Some are aware of the requirement to file as married, but state they do not want to as their spouse has a debt that will intercept their tax refund. Many report that a different tax preparer in a previous year has told them that they could file as single or head of household which, of course, is incorrect.

We regularly assist clients to file IRS form 8379, Injured Spouse Allocation, in order for them to file their tax return accurately and still receive a portion of their tax refund that they are eligible for. Most are unaware of this option.



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Some clients have incorrect knowledge in relation to education credits. They believe there is a college education credit that everyone receives if they or their child is in college. They relate to us stories of friends and family receiving education credits, despite their not paying for any college expenses nor obtaining education loans. Some also report having personally done the same on their own tax return in the past. Once we explain to them the eligibility for education credits they are disappointed that they are not eligible to receive the credit, but thankful that their tax return would be filed correctly.

Some of our clients come to us with incorrect knowledge pertaining to certain tax credits, like the Earned Income Tax Credit. For example, Mr. H came to have his taxes completed at CEP in 2015. He had two sons whom he reported claiming on his tax returns since they were born. Despite being a dependent, one of his son's was not a qualifying child for the EITC due to being 21 years old and not in school. Mr. H was confused because his tax preparer for the prior year did not ask about his son's school attendance, and he was able to claim his son as a qualifying child and receive a larger EITC-based refund from both the federal and state governments. The difference in his EITC was \$1,901, an EITC for two children for \$4,408 compared to one child for \$2,507. This translates to a \$190 difference for the IL EITC.

Within Illinois, three of the four Low Income Taxpayer Clinics have seen several cases each year since 2012 of instances in which Illinois taxpayers have faced serious IRS and IDOR collection matters as results of unscrupulous or incompetent return preparers. At the Center for Economic Progress, approximately 10% of our caseload since 2012 has involved tax controversies created by the actions of unscrupulous or incompetent return preparers. While it is difficult to estimate the full extent of the problems caused by unscrupulous return preparers, sufficient evidence exists to establish that it is a serious problem and one with which Illinois taxpayers need assistance.

Mrs. A came to the tax clinic after she was notified that her Supplemental Security Income (SSI) was going to be reduced from \$155 per month to \$85 per month for the next two years because of self-employment income claimed on her tax return. SSI is a federal income supplement program designed to help disabled people who have little or no income or earnings history. The client is disabled and receives less than \$8,000 per year, so this reduction was devastating to her. The client did not have a filing requirement, but went to a paid tax-preparer to have her return prepared because her son needed this information in order to apply for financial aid for school. The tax preparer falsified self-employment income which resulted in a large EITC-based tax refund. The preparer reported the client's SSI income received on behalf of her son as self-employment income. The client eventually realized the error, but was unable to resolve the issue because the tax preparer was no longer in business. To fix this issue, the Clinic amended her return to remove the self-employment income. This resulted in a balance due of approximately \$2,000 which the client was, and will be, unable to ever repay. The Clinic proposed an offer in compromise and settled the debt with the IRS for \$100.

Mr. C is a functionally illiterate taxpayer whose neighbor helped him file his tax returns by taking him to a return preparer in another state. Mr. C is a single taxpayer with no children who annually received a small refund of his excess withholding. After he began receiving collection notices from the IRS, his sister convinced him to call the tax clinic. The clinic

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investigated Mr. C's federal and state tax accounts and discovered that his tax returns for the preceding three years had each claimed three dependent children, the child tax and additional child tax credits and the earned income tax credit resulting in thousands of dollars in state and federal tax refunds which were deposited into the tax preparer's bank account. Because Mr. C's refunds, which he received directly from the tax preparer, were entirely within the range of his customary refunds, he was completely unaware that his neighbor and the tax preparer were making unsubstantial claims on his tax returns. The clinic was able to convince the IRS to pursue the tax preparer and neighbor for the return of the inappropriately received refunds but only after more than two years of work.

The practices of unscrupulous tax preparers such as the ones we've just mentioned are outrageous abuses of trust in their own right. In addition, however, they represent enormous and unnecessary expenditures of taxpayer dollars at the federal and state levels. Not only are unscrupulous preparers receiving refunds to which they are not entitled, but the IRS and the states are further burdened by the time and expense of resolving the tax controversies which result from these practices.

Clearly, a solution to the nationwide problems caused by unregulated return preparers requires action at the federal level. Only the IRS has the authority necessary to alter the regulatory framework within which tax return preparers operate in any meaningful way. However, the decision in *Loving v. IRS* [742 F.3d 1013 (D.C. Cir. 2014)] has left a vacuum which exposes taxpayers to a myriad of schemes operated for the unjust enrichment of unscrupulous tax return preparers. The states are, in this environment, the only entities which are capable of offering meaningful regulation as well as being the arenas in which a case for federal regulation may be made.

The Center for Economic Progress encourages the Commission to recommend a regulatory framework for the identification of reliable, competent tax return preparers to the taxpayers of Illinois. Such a framework should make it possible for taxpayers to identify the thousands of CPAs, enrolled agents, and reliable and reputable unenrolled return preparers who operate tax preparation services within the state. Such a regulatory framework should establish minimum qualifications for entry into the profession and minimum standards of continuing education for return preparation professionals.

A system to regulate return preparers ought to focus on establishing the necessary qualifications for a competent and qualified tax preparer so that Illinois taxpayers will be able to identify those preparers who can be trusted to prepare returns. More than anything else, residents of Illinois will be able to identify those tax preparers who have satisfied the state's minimum qualifications, and they will be able to avoid those preparers who have not done so.

**The Center submitted the following statement to the Task Force at the September 23, 2015 meeting, which was prepared by Paul Harrison and David Marzhal.**

The Center for Economic Progress, Illinois' premier provider of tax and financial services for low-income working families, respectfully urges the Commission to recommend that the state legislature adopt a program to regulate the tax preparation industry in Illinois. We

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believe that, by taking advantage of existing and proven programs which effectively regulate attorneys, CPAs, and enrolled agents, an economical and affordable regulatory system can be implemented.

As we have mentioned previously, the problems caused by the unregulated tax return preparation industry are national in both scope and impact, and a truly effective regulatory system must come from the IRS. Recent developments in the US Senate Finance Committee indicate that a bi-partisan group of Senators who support tax return preparer regulation is slowly emerging. The Senate Finance Committee has recently recommended expanding the IRS' role to include the regulation of tax-return preparers. However, it is unlikely that any such legislation will be acted upon before the next presidential election, and, as is often true in the US, it falls to the states to begin the process of regulating the tax-preparation industry.

We suggest that a state-level regulatory system require attorneys, enrolled agents, and CPAs to register with the state providing evidence that they are in good standing in their respective professions. At the same time, such a system ought to establish minimum standards for unenrolled tax preparers to prepare tax returns in Illinois and to provide for initial and periodic registration of such preparers. Such a program will alleviate a problem that annually costs taxpayers and the State of Illinois a substantial amount of money. It will not, by any stretch of the imagination, entirely eliminate that problem. However, it will make it more difficult for unscrupulous and unqualified tax preparers to operate with impunity. In the final analysis, the question is not whether Illinois can develop a perfect system but whether the state can improve a situation that annually costs the state and its residents money, time and unnecessary anxiety.

If we require barbers to register with the state, why wouldn't we also have such a requirement of those whose work has a much greater financial impact and potential risk to both consumers and the state government?

By establishing minimum standards and registration for unenrolled tax preparers, the legislature will provide the public with sorely needed protection against incompetent and unscrupulous tax preparers by identifying and highlighting the public about those preparers who are authorized to prepare tax returns in Illinois. Doing so will enable Illinois taxpayers to make informed choices when they seek out a tax preparer. Furthermore, it provides a less expensive, more feasible path to identify and hold accountable tax preparers who are unscrupulous and incompetent.

A number of arguments in opposition to such a system have been advanced at earlier hearings.

## **Excessive Regulation**

Unenrolled tax preparers have complained that they are already heavily regulated and that any additional regulation would be unnecessarily burdensome. There is little merit to this claim.

The reality is that unenrolled tax preparers are at present virtually entirely unregulated with regard to tax preparation in Illinois. A statewide licensing and registration system would be a first.

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To be sure, unenrolled tax preparers are subject to IRS paid-preparer regulations which apply to paid preparers as a whole. However, these paid-preparer regulations are minimal, and do not assist in the identification of incompetent preparers. A preparer can comply with the paid preparer regulations while still exposing unwitting taxpayers to the types of problems incompetent and unscrupulous preparers generate. Additionally, unscrupulous tax preparers can evade the paid-preparer regulations entirely by purchasing retail software packages made for self-preparers and e-filing returns by purporting to be self-prepared by the taxpayer.

## **Increased Cost**

Some critics have cautioned that such a system would cause tax preparers additional expense and would lead to increased fees for tax return preparation. There is little basis for this claim as well.

The approach we have suggested imposes no significant additional burden on attorneys, CPAs, or enrolled agents and, thus, provides no basis on which to base a fee increase. Similarly, scrupulous unenrolled tax preparers – those who remain current in their knowledge of US and state tax laws – would also experience no additional burden. The only group of preparers who would need to assume additional expenses are those who have neglected to keep up with tax law changes.

Unquestionably, some preparers might raise their fees in light of the adoption of a licensing and registration system. However, the source of those increases will be something other than the regulatory system itself. A proposed licensing fee of \$200 should have little impact on fees charged for services if spread out over all clients. A tax preparer with 100 clients would need to raise his or her rates no more than \$2.00. Such an increase is not, by any means, prohibitive.

## **More Taxpayers Forced to Prepare Their Own Returns**

The complaint by unenrolled tax preparers that some of their clients may be forced to prepare their own returns ignores several important facts.

Unenrolled tax preparers have the highest error rate in the tax preparation industry. Taxpayers who prepare their own tax returns make fewer mistakes than unenrolled tax preparers make. As a result, many taxpayers in this position may actually be better off preparing their own returns.

Second, low-income taxpayers, the group most vulnerable to being preyed upon by unscrupulous and incompetent tax preparers, have access to free tax preparation services in every part of the state through the various VITA programs that exist. No group of tax preparers has a lower error rate than VITA programs. IRS, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns*, p. 27. No other group offers its services at a lower cost. Thus, the most vulnerable population in the state is able to substitute free tax preparation for the service they are now paying unenrolled tax preparers to perform. Both the savings they realize

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from the change and the improved accuracy rating of free tax preparation sites could be a net positive for these vulnerable taxpayers.

Third, “There is no statistical difference between self-prepared and paid preparer returns in either the frequency of overclaims or the dollar overclaim percentage.” IRS, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns*, p. 24. The premise that tax returns prepared by unenrolled tax return preparers are more accurate than those prepared by lay taxpayers themselves is simply false. Self-prepared returns are generally *more accurate* and contain *fewer mistakes* than returns prepared by unenrolled tax preparers.

### **“We can’t catch all the bad guys”**

As John Stuart Mill posited many years ago, the justification for a regulatory system is the amelioration of harm to the public. The function of any regulatory system is as much the identification of competent and trustworthy practitioners as it is the identification and elimination of incompetent or unscrupulous ones.

The Center for Economic Progress and other interested parties have provided the Commission with substantial evidence of the harm experienced by Illinois taxpayers under the current unregulated system. The legislature is in a position to significantly reduce the degree of exposure by Illinois taxpayers to the harm of unscrupulous and incompetent tax preparers - a worthwhile goal even if some unscrupulous or incompetent preparers find ways to escape detection.

Along similar lines, laws against speeding do not entirely eliminate speeding, nor have they ever enabled the police to catch all speeders all the time. Nonetheless, laws against speeding have made the roads demonstrably safer for everyone. Similarly, Illinois taxpayers will be better off if they know which tax preparers in their communities are authorized to prepare tax returns and which preparers have satisfied the state’s established minimum criteria for return preparation.

### *Robert Kerr*

Robert Kerr, Senior Director Government Relations National Association of Enrolled Agents, spoke before the Task Force on August 20, 2015. Robert Kerr has served as the Senior Director, Government Relations of the National Association of Enrolled Agents (NAEA) since 2004. In his position he is responsible for advocating the legislative and regulatory interests of enrolled agents and serves as liaison to the federal tax authorities. He manages a staff that monitors and interprets federal and state tax legislation, develops and advances policy positions on legislation and regulation, and increases enrolled agent recognition.

Mr. Kerr submitted a statement entitled, “Statement of before the Illinois Tax Return Preparation Task Force.” The statement reads as follows:

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“...most people would be astounded to find out that while their barber or manicurist is licensed, that their preparer may not be. Comparing the downside of a bad hair cut to incorrect tax return, it is time to establish federal standards to ensure basic competency and ethical behavior.”

Francis X. Degen, EA, Past President, NAEA  
US House of Representatives, Ways and Means Committee  
July 20, 2005

The question of return preparer oversight is not a new one. As long ago as 1995, the Internal Revenue Service’s Commissioner’s Advisory Group<sup>7</sup> recommended amending Circular 230 to prescribe rules for the registration of commercial tax return preparers. The National Association of Enrolled Agents (NAEA), the principal organization representing the interests of some 50,000 enrolled agents (EAs) across the country, has been advocating for years that oversight was essential to protect taxpayers, to protect the federal treasury, and to level the playing field for the professional tax preparation industry.

To that end, NAEA has supported federal efforts—legislative, administrative, or both—to provide oversight to the widely unregulated tax preparer community. Our philosophy is simple: Americans who pay a “professional” ought to receive a professional-quality tax return. Unfortunately, many Americans cannot be reasonably assured that a given paid preparer will indeed produce a professional-quality, accurate return. We believe that is wrong.

Those engaged in this conversation understand all too well that *Loving v. IRS* was not a judgment on the merits of IRS’ oversight program. To be clear from the onset, we side with those who believe such a program necessary, and we believe the agency performed admirably in establishing its oversight program.<sup>8</sup>

Notwithstanding the *Loving* decision, the problem IRS attempted to address—taxpayers harmed by incompetent or unethical preparers—is real and ongoing. Enrolled agents write frequently to regale us with stories of unbelievable positions so-called professionals have taken on returns. One example just to illustrate the point: an unenrolled preparer placed a taxpayer’s long-term rental property on a Schedule C (rather than on a Schedule E). Adding insult to injury, the preparer proceeded to lard up the return with illegitimate employee business expenses (suits, for instance) for the taxpayer’s physician spouse and completely unsubstantiated credits on the Form 1040 line for ‘other credits.’

We are not alone in our belief that the world of return preparation should not in any way resemble the Wild West. Surely, others who preceded me in testifying have expressed this.

My take is that the question is not whether we will see widespread return preparer oversight in the not too distant future, but what form it will take. We therefore find ourselves at a

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<sup>7</sup> The Commissioner’s Advisory Group is predecessor to the current IRS Advisory Committee, commonly referred to by its acronym IRSAC

<sup>8</sup> What was probably most noteworthy is what the agency didn’t do: huddle behind closed doors and hammer out a program unburdened by business realities. Instead, IRS reached out in a meaningful fashion—early and often—when creating its oversight program. While we did not agree with all the decisions, we believe the Service listened to the concerns of all and made principled decisions. Stakeholders got their say; stakeholders did not necessarily get their way.



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fork in the road; on the one hand Congressional action could create a consistent, reasonably swift, and relatively unobtrusive approach, while on the other hand individual states (and municipalities) could create regulations that are chaotic, patchwork, and inconsistent.

In the interest of long run stability, NAEA believes taxpayers and the tax administration system are best protected by national standards for all paid return preparers and oversight of the entire community. During this debate, NAEA has consistently urged policymakers to consider some fundamental principles for reform:

- **Competency:** Taxpayers would have a reasonable expectation of competency if preparers are subject to initial testing,<sup>9</sup> annual continuing education requirements, tax compliance checks, and strong ethical standards. The absence of an initial competency test could place taxpayers in a worse position than currently exists, as taxpayers will assume a preparer holding a federal license has at least demonstrated minimal competence.<sup>10</sup>
- **Consolidation:** Any program should build on the existing regulatory framework and consolidate enforcement and administration at the federal level (under the Office of Professional Responsibility and the Return Preparer Office, respectively). This structure creates a variety of benefits: a single ethics code; coordinated exams that would allow for advancement within the profession; and, standardized continuing education requirements all administered under the already existing system.

Consolidation within the agency should ensure uniformity of standards and enforcement for all return preparers and necessary privacy for taxpayer information. It also prevents the cost, redundancy, and confusion that would come from dozens of different state requirements with dozens of different standards.

- **Resources:** A successful program is predicated on adequate resources for administration, promotion and enforcement. Promotion is noteworthy because IRS needs to reach the tax professional community<sup>11</sup> as well as taxpayers at large. It is not unreasonable or unusual for professionals to pay for their licenses—attorneys pay for their licenses, certified public accountants pay for theirs, and EAs pay for theirs, too.<sup>12</sup> IRS should retain all registration fees for program administration and promotion.

The reality though is that post-*Loving*, the agency is not in a position to implement such a program. We continue to urge Congress to clarify that IRS has the authority to run a return preparer oversight program—and in fact always has had that authority. We strongly recommend

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<sup>9</sup> Testing should not be waived based on an individual's years of experience.

<sup>10</sup> Not only the 706,141 individuals with current Preparer Tax Identification Numbers (see IRS website for statistics), but also those who prepare returns but do not know of any preparer requirements.

<http://www.irs.gov/Tax-Professionals/Return-Preparer-Office-Federal-Tax-Return-Preparer-Statistics>

<sup>11</sup> Particularly given the current budget environment, dollars should come from paid preparers, not from appropriated funds.

<sup>12</sup> A PTIN is a preparer tax identification number and is required of all paid return preparers, though the PTIN does not require any competency or continuing education. Similarly, an EFIN is an electronic filing identification number and it is provided to those who are permitted to file electronically, though EFIN holders have neither demonstrated competency nor been required to take continuing education.



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Congress clarify IRS' authority in such a fashion that IRS need not rebuild a program from scratch. Starting from square one would be expensive—and wastefully so considering the thoughtfulness and inclusiveness of the original process. We have waited long enough for a system that works for taxpayers and for the profession, and re-fighting old battles is not a recipe to move forward quickly and efficiently.

While we advocate for federal action, though, we have had two concerns. The first is that IRS would institute a new voluntary program. The agency has unfortunately taken this step and we have opposed and continue to oppose that program.

At the risk of being unkind to my friends at IRS, the new voluntary program has a number of flaws, the most glaring of which is that it lacks the rigor necessary to provide taxpayers with reasonable assurances that the person charging for his or her services is at least minimally qualified to do so. It has also creating a non-credential that looks like a credential—which confuses the marketplace. How is a taxpayer to distinguish between a legacy Circular 230 practitioner, other IRS-created (or recognized) credentials, and something as simple as a PTIN or EFIN?<sup>13</sup> Further, and just as troubling, the agency has created transition troubles (not to mention trust problems) by walking away from a sanctioned Registered Tax Return Preparer program.

This leads us to our second concern: a proliferation of state regulatory programs. The longer federal policymakers take to create a program, the more likely it is that individual states will create regulatory programs of their own. Such an approach has great potential to be patchwork, with the inevitable result that a return preparer in Illinois would find him or herself subject to different requirements for Kentucky, for Indiana, for Michigan, and so on. Given the high incidence of interstate tax return preparation, this patchwork would be a nightmare administratively and, no doubt, unnecessarily expensive and bureaucratic. Such costs are invariably passed on to consumers.

We have good news on the federal front, however. Both chambers are writing legislation that would address IRS' *Loving* problem. Further, both parties are on board and the legislators in question are on the tax writing committees. We expect a markup from at least one of the tax writing committees well before the end of 2015.

States have options that don't require the creation of a new regulatory structure. Probably the most overlooked strategy is one of raising public awareness of what a bad return preparer looks like (e.g., promises \$5,000 refund, fails to ask for substantiation of deductions, etc.) and, conversely, what type of return preparer to seek.

Should a state decide to institute a voluntary program while awaiting Congressional action, we ask policymakers to keep in mind that IRS has for decades had a voluntary program in place—in which attorneys, certified public accountants, and enrolled agents have of their own accord subjected themselves to high and stringent standards.

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<sup>13</sup> IRS may be of assistance in this arena. The agency regularly reminds taxpayers how to choose a return preparer. <http://www.irs.gov/uac/Newsroom/IRS-Urges-Taxpayers-to-Choose-a-Tax-Preparer-Wisely--for-the-Filing-Season-Ahead>

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We already have the means to promote competency in a voluntary program. Enrolled agents are less widely known than their legacy Circular 230 brethren, but the program has practical, attractive features. It is egalitarian, owing to its low barriers to entry (neither college education nor an apprenticeship program is required). The multi-part EA test is available right now—and no one seriously doubts its rigor nor that those who pass have demonstrated a wide understanding of Title 26. Further, enrolled agents are widely recognized by state taxation authorities.

NAEA thanks Jay Stewart, and the other members of the task force. The conversation you are having is timely and worthwhile.

We have for well over a decade been deeply involved in raising awareness of the dangers of incompetent and unethical paid tax return preparers. These bad actors harm individual taxpayers, undermine the tax preparation industry, corrode the tax administration system, and harm the public treasury.

We urge the task force to give strong consideration to supporting a federal program, which would create a number of benefits. The temptation to create a stand-alone program is strong, yet we have lived in the wild west long enough to know that we can—and should—do better.

*Stan Hutchinson*

Stan Hutchinson is currently the President, and one of two shareholder/owners of Tax Tech, Inc. This is a position Stan has held since 2002. Tax Tech is in the business of educating, training, and offering tax season support to businesses that operate tax offices as an ancillary business to their primary business. That is accomplished with a Tax Tech staff of CPAs, EAs, and people who passed the now defunct RTRP exam. Last year Tax Tech supported well over 1,200 offices in 16 States throughout the United States. That included over 80 offices in the State of Illinois. Tax Tech operated a training program for well over 3,000 separate preparers in 2014. The training traditionally begins in the summer months and extends through the fall. Prior to the formation of Tax Tech, Stan owned and operated Hometown Tax Partners from 1992 through 2006 in Harrisburg, Illinois. Stan was the primary preparer in an office that averaged preparing around 400 individual tax returns per year. He spoke to the Task Force on August 20, 2015.

## **Tax Return Preparation Practice**

Mr. Hutchinson noted that in the event the Task Force recommends licensure, he would be one of the individuals required to obtain a license. Although some preparers may be fraudulent, paid tax preparers are underappreciated as an industry overall. For example, preparers are partially to thank for the shift in the public utilizing e-file returns which has been a positive for the IRS and State Departments of Revenue.

He noted that tax software results in less than 1% of errors, meaning that the issues of error come down to the tax preparer or the consumer tax payer. For preparers, it is usually those “in the closet” or “underground” who caused the majority of errors and fraud. Licensure of

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preparers would further drive such individuals “underground.” For example, a preparer or preparer office with a large number of education credits is typically problematic, as is a preparer or preparer office with an unusually high volume of Schedule C’s claiming EITCs. Some of these issues could be assisted if preparers had a resource for problems. Currently, preparers are limited to filing fraud complaints with the IRS which often results in no action being taken.

Mr. Hutchinson provided the following data, from the IRS:

<b>Filing Season Statistics for Week Ending Feb. 20, 2015<sup>14</sup></b>			
<b>2015 FILING SEASON STATISTICS</b>			
Cumulative statistics comparing 2/21/14 and 2/20/15			
<b>Individual Income Tax Returns</b>	<b>2014</b>	<b>2015</b>	<b>% change</b>
Total Receipts	49,558,000	49,651,000	0.2
Total Processed	48,335,000	48,295,000	-0.1
<b>E-filing Receipts:</b>			
TOTAL	46,641,000	47,157,000	1.1
Tax Professionals	24,687,000	23,725,000	-3.9
Self-prepared	21,954,000	23,432,000	6.7
<b>Web Usage:</b>			
Visits to IRS.gov	143,672,874	158,287,233	10.17%
<b>Total Refunds:</b>			
Number	40,389,000	39,964,000	-1.1
Amount	\$125.831 billion	\$124.670 Billion	-0.9
Average refund	\$3,116	\$3,120	0.1
<b>Direct Deposit Refunds:</b>			
Number	35,694,000	36,817,000	3.1
Amount	\$112.628 billion	\$118.496 Billion	5.2
Average refund	\$3,155	\$3,218	2.0

<sup>14</sup> <http://www.irs.gov/uac/Newsroom/Filing-Season-Statistics-for-Week-Ending-Feb-20-2015> (accessed August 21, 2015).

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<b>Filing Season Statistics for Week Ending April 17, 2015<sup>15</sup></b>			
<b>2014 FILING SEASON STATISTICS</b>			
Cumulative statistics comparing 4/18/14 and 4/17/15			
<b>Individual Income Tax Returns:</b>	<b>2014</b>	<b>2015</b>	<b>% change</b>
Total Receipts	131,170,000	132,268,000	0.8
Total Processed	125,604,000	126,121,000	0.4
<b>E-filing Receipts:</b>			
TOTAL	115,969,000	118,766,000	2.4
Tax Professionals	69,992,000	70,064,000	0.1
Self-prepared	45,977,000	48,702,000	5.9
<b>Web Usage:</b>			
Visits to IRS.gov	269,138,999	302,576,118	12.4
<b>Total Refunds:</b>			
Number	94,809,000	91,818,000	-3.2
Amount	\$254.702 Billion	\$248.918 Billion	-2.3
Average refund	\$2,686	\$2,711	0.9
<b>Direct Deposit Refunds:</b>			
Number	76,714,000	76,824,000	0.1
Amount	\$217.657 Billion	\$222.000 Billion	2.0
Average refund	\$2,837	\$2,890	1.8

He noted that a state regulatory structure for licensure of preparers would likely increase the percentage of individual self preparing. Mr. Hutchinson also noted that fraudulent tax payers will not utilize a properly licensed tax preparer. This has already been revealed due to recent increases of the requirements for due diligence in tax preparers. The heightened due diligence is a result of the \$500 EITC penalty. This is also revealed by the common practice of customers asking for an estimate, but in reality, using the preparer to “okay” the return and ultimately not seek the preparer’s services.

Ultimately, the fraudulent and underground practices within the tax preparation industry, which are the major concerns, would continue to exist even with an Illinois licensing structure.

*Martin Lieberman*

Martin A. Lieberman was Treasurer of the Illinois Community Currency Exchange Association, holding that position for 25 years, and has been President of the association for the last 3 years. He is a member of the Executive Committee of the National Association Financial Service Centers of America. He has received various awards, including national check casher of

<sup>15</sup> <http://www.irs.gov/uac/Newsroom/Filing-Season-Statistics-for-Week-Ending-April-17-2015> (accessed August 21, 2015).

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the year in 1997. Mr. Lieberman owned and/or operated as either employee, sole owner or as corporate officer check cashing businesses since 1957. He participated as board member or officer of two professional check cashing organizations. He graduated from DePaul University with a BS Accounting in 1964. He spoke to the Task Force on August 20, 2015.

Mr. Lieberman noted that he was attending in order to inform the Illinois Community Currency Exchange Association members of the Task Force's role given that currency exchanges often hire tax preparers. Mr. Lieberman pointed out that a common issue with tax preparation is clients providing false or fraudulent information, which would not be solved via a licensure of preparers. However, he also noted that preparers can prepare returns fraudulently and this could unfortunately impact one of the Association members. Typically, currency exchanges chose a tax preparer based on an existing relationship and a reputation of reliable services. Overall, Mr. Lieberman reminded the Task Force that regulation should not be a burden to the people of the State of Illinois if not necessary.

### *U.S. Government Accountability Office*

On September 23, 2015, the U.S. Government Accountability Office's Jay McTigue and Elizabeth M. (Libby) Mixon spoke to the Task Force.

Jay McTigue is a Director in GAO's Strategic Issues team overseeing audit and analyses related to Tax Administration and Tax Policy. Mr. McTigue has over 24 years of GAO audit experience across a variety of agencies and programs. Prior to moving to the tax area, Mr. McTigue led GAO's analysis of the nation's long-term fiscal challenge and its key drivers—an aging population and health care cost growth. This work included evaluations of Social Security and Medicare reform options. Mr. McTigue has also worked to increase awareness of the fiscal pressures facing the federal government. In collaboration with GAO's Financial Management team, Mr. McTigue contributed to the development of a prototype of a Citizen's Guide to the Financial Report and the fiscal sustainability reporting standard for the federal government. As part of GAO's oversight of the Recovery Act, Mr. McTigue led GAO's reviews of reported job creation. Mr. McTigue has a bachelor's degree in Economics from Brown University and holds a Master's degree in Public and Private Management from the Yale School of Management.

Elizabeth M. (Libby) Mixon is as an Assistant Director in GAO's Strategic Issues team. With over 20 years of audit and management experience, she has led numerous reviews examining the Internal Revenue Service's efforts to provide taxpayers with quality service while enforcing the tax laws. Her work has helped to shape legislation and public policy in key tax program areas, such as the earned income tax credit. Mrs. Mixon has also helped the Congress oversee IRS's budget for the last 8 years, making recommendations to improve government operations while saving the American taxpayer hundreds of millions of dollars. Her groundbreaking work developing criteria to assess IRS performance metrics won the American Evaluation Associations Top Award. In addition to her work with IRS, Mrs. Mixon provides leadership on GAO's efforts to identify unnecessary fragmentation, overlap and duplication throughout the federal government. Mrs. Mixon is a Certified Public Accountant and holds a B.A. in accounting from Emory University.

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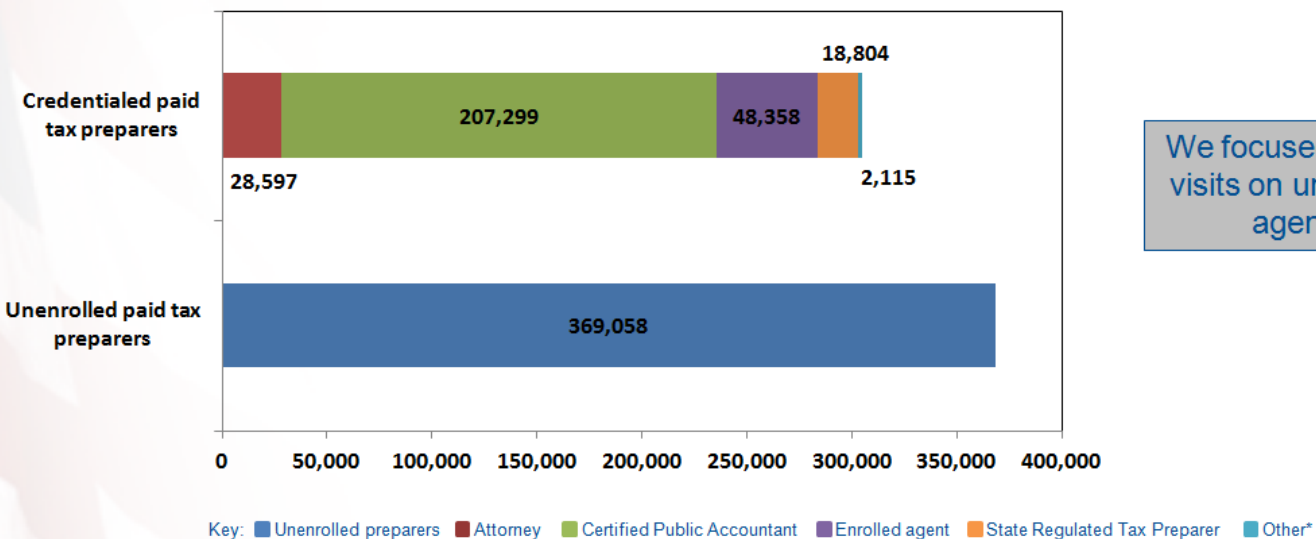
## Paid Preparers

Mr. McTigue noted that a “paid preparer” is any person who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of a tax return or claim for refund of tax. Unenrolled agents are a type of paid preparer that: does not have another type of credential, such as an attorney, Certified Public Accountants (CPAs), or enrolled agent; is not subject to Circular No. 230; and is limited in their right to represent clients before the IRS.

Over half of all taxpayers rely on the expertise of a paid tax preparer to provide advice and help them meet their tax obligations. IRS regards preparers as a critical link between taxpayers and the government. Our work found that preparers continue to make significant errors on tax returns. In addition, our work found that establishing requirements for paid preparers could improve the accuracy of the tax returns they prepare.

The IRS identified almost 370,000 unenrolled (unregulated) tax preparers in processing year 2014.

**Figure 2: Number of PTINs by Credentialed and Unenrolled Paid Tax Preparers for Processing Year 2014**



We focused our site visits on unenrolled agents.

Notes: \*Other category includes Enrolled Retirement Plan Agents, Certifying Acceptance Agents, and Enrolled Actuaries. Preparers may have more than one credential.  
Source: IRS, Tax Professional PTIN System (TPPS). Data as of February 28, 2014.

Statistic of Income (“SOI”) data shows that use of paid preparers varied by tax return complexity. According to SOI data, 56 percent of about 145 million individual tax returns filed for tax year 2011 were completed by a paid preparer. Usage of paid preparers is higher among taxpayers with more complicated returns; for example, those using the Form 1040 as opposed to the Form 1040 EZ and those claiming itemized deductions.

# Illinois Tax Return Preparation Task Force Report

## Estimated Percentage of Individual Taxpayers' Returns Using a Paid Preparer for Tax Year 2011, by Various Groupings

<b>Grouping and subgrouping</b>	<b>Estimate (percent) Tax Year 2011</b>
<b>Type of return</b>	
Form 1040EZ	34
Form 1040A	43
Form 1040	63
<b>Filing status</b>	
Single	50
Head of household	61
Married filing jointly	62
<b>Type of deductions</b>	
Standard	53
Itemized	63
<b>EITC</b>	
Not claimed	55
Claimed	59

In 2014, to cover a range of common tax issues, two different scenarios were crafted for limited paid preparer site visits. We determined common tax issues based on the most frequently filed tax forms and the most frequently used lines on tax forms using 2011 SOI data. The first was the “Waitress Scenario” which included a single mother whose occupation is a waitress with cash and noncash tips, one child who lived with her during 2013 and one child who did not—both under 15 years, deductions include student loan interest, eligibility to claim the EITC. Ten site visits to national tax preparer servicers were conducted under the waitress scenario. The second was the “Mechanic Scenario” which included a married couple filing jointly in which the husband is a mechanic and his wife is a homemaker. It also included three children living at home aged 7, 15 and 20, itemized deductions including mortgage interest, state sales tax, and charitable gifts, and both the husband and wife have non-W2 business income, including mileage expenses. Nine site visits to national tax preparer servicers were conducted under the mechanic scenario.

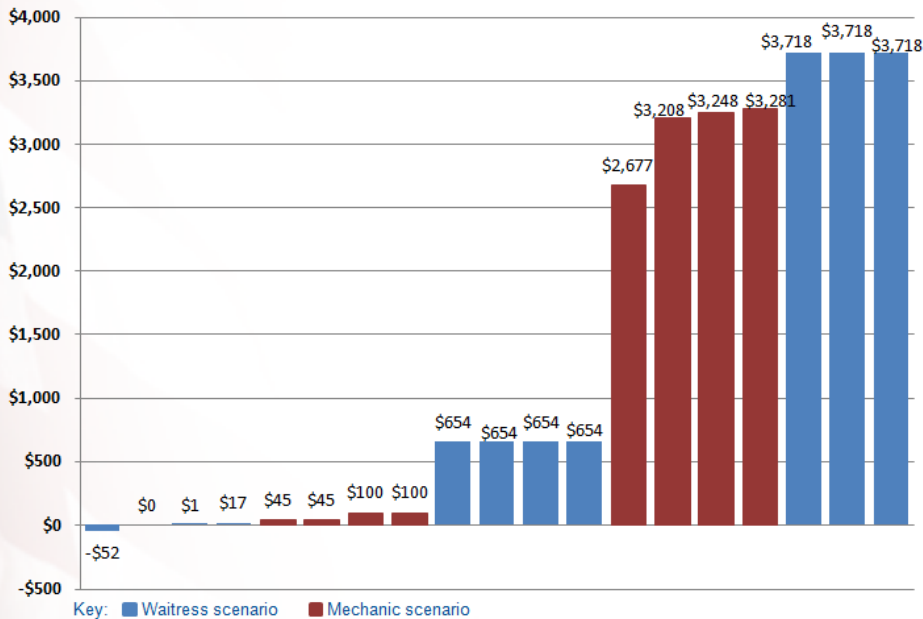
The 19 site visits revealed significant preparer errors. Preparer errors resulted in refund amounts that varied from giving the taxpayer \$52 less to \$3,718 more than the correct amount. Two of the 19 paid preparers calculated the correct refund amount and six of the 19 paid preparers calculated returns within \$52 of the correct refund amount. One of the ten paid preparers determined a correct tax return for the waitress scenario and one of nine paid preparers determined a correct tax return for the mechanic scenario. Paid preparers at multiple sites the GAO visited could be subject to various Internal Revenue Code violations and associated penalties.



# Illinois Tax Return Preparation Task Force Report

Errors in tax preparation resulted in inaccurate refund amounts, with a majority of refund claims overstated.

**Figure 3: Refund Amounts Over or Under Correct Amount**



- Of the 19 paid preparers we visited, only 2 determined the correct refund amount.
- On 16 returns (8 for the waitress and 8 for the mechanic), preparers overstated the total refund.

Key: ■ Waitress scenario ■ Mechanic scenario

Source: GAO analysis.

Notes: We determined that the tax return with an estimated refund amount of \$1 was calculated correctly. The difference is attributable to a rounding error. Of the two paid preparers that arrived at the correct refund amount, one tax return was prepared for the waitress scenario and one for the mechanic scenario.

Improper conduct in connection with the preparation of tax returns can result in Internal Revenue Code penalties.

**Table 6: Selected Internal Revenue Code Penalties**

Internal Revenue Code	Description	Penalty	During site visits:
IRC § 6694(b)	Understatement of taxpayer's liability due to willful or reckless conduct	\$5000 or 50 percent of income derived	12 of 19 preparers did not include taxable income and may be subject to this violation.
IRC § 6695(a)	Failure to provide a copy of the return to the taxpayer	\$50 per failure	3 of 19 preparers did not sign the return and may be subject to this violation.
IRC § 6695(b)	Failure to sign return	\$50 per failure	
IRC § 6695(c)	Failure to furnish identifying number	\$50 per failure	4 of 19 preparers did not provide correct PTINS and may be subject to this violation.
IRC § 6695(d)	Failure to retain a copy or list of returns filed	\$50 per failure	
IRC § 6695(g)	Failure to be diligent in determining earned income tax credit eligibility <sup>a</sup>	\$500 per failure	3 of 10 preparers did not exercise due diligence and may be subject to this violation.

Source: Internal Revenue Code

Notes: <sup>a</sup>There are four due diligence requirements. Generally, if paid preparers prepare EITC claims, preparers must not only ask all the questions to get the information required on Form 8867, Paid Preparers' Earned Income Credit Checklist, but preparers must also ask additional questions when the information the client gives the preparer seems incorrect, inconsistent or incomplete. Preparers must prepare, submit, and keep a copy of the Form 8867. Preparers must keep all worksheets showing how the credit was computed.

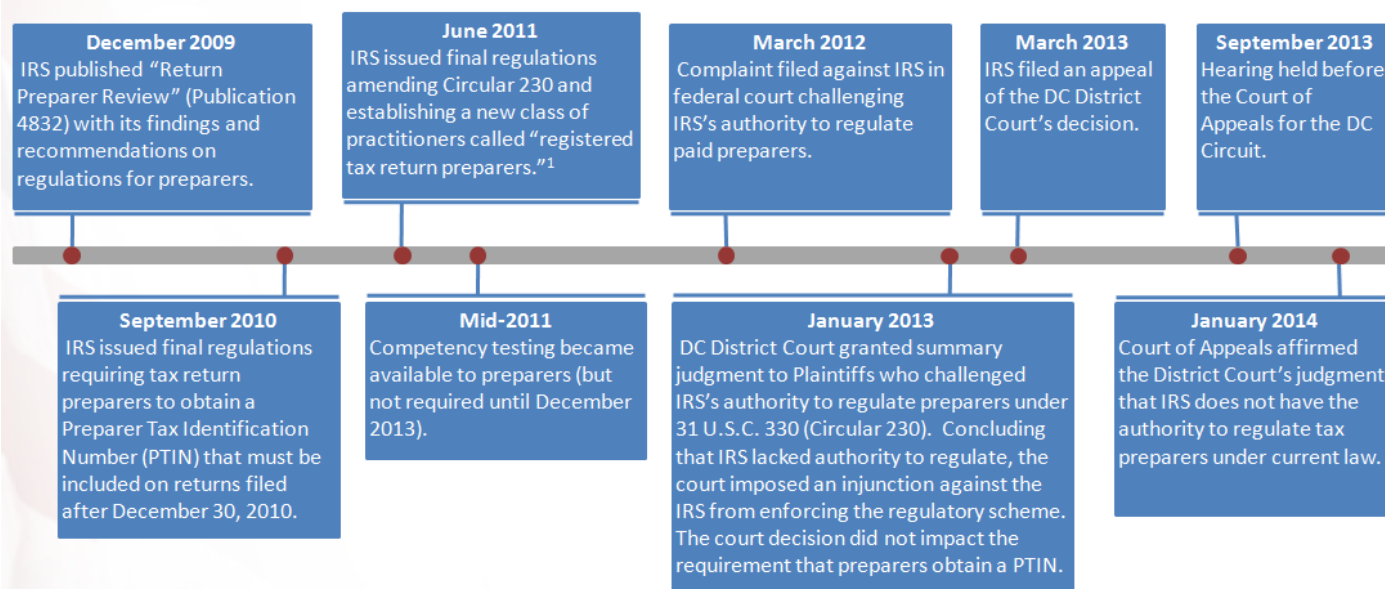
# Illinois Tax Return Preparation Task Force Report

In 2006, undercover GAO work had similar results. GAO's visits to 19 paid preparers resulted in unwarranted extra refunds of up to almost \$2,000 in 5 instances, while in 2 cases they cost the taxpayer over \$1,500. At that time, some of the most serious problems included:

- Not reporting business income in 10 of 19 cases;
- Not asking questions about where a child lived or ignoring answers to questions provided and, therefore claiming an ineligible child for the EITC in 5 out of 10 applicable cases;
- Failing to take the most advantageous post secondary education tax benefit in 3 of the 9 applicable cases; and
- Failing to itemize deductions at all or failing to claim all available deductions in 7 out of 9 applicable cases.

The IRS implemented paid preparer regulations until the courts determined IRS did not have the authority.

**Figure 1: Timeline of IRS Paid Preparer Regulations**



<sup>1</sup>Certain preparers became registered tax return preparers under an IRS program that IRS is no longer able to enforce due to a District Court injunction. We refer to this group as unenrolled agents.

The IRS is authorized to regulate certain paid preparers. The current state of IRS oversight of paid preparers requires all paid preparers to register for a PTIN and renew annually. Certain paid preparers are regulated by IRS under Circular No. 230. These include: attorneys, CPAs, enrolled agents, actuaries, and retirement plan agents. Since January 2013, the IRS was enjoined from regulating unenrolled agents and as a result cannot require unenrolled agents to take a competency examination or complete continuing professional education requirements. In its place, the IRS established program that will allow unenrolled return preparers to obtain a record of completion when they voluntarily complete a required amount of continuing education (with a required comprehension test at completion), including a course in basic tax filing issues and updates, ethics and other federal tax law courses.

## Illinois Tax Return Preparation Task Force Report

As of March 2014, four states regulated paid preparers—the date of implementation and the requirements differ. In 2008—prior to Maryland and New York implementing paid preparer requirements—we reported on state-level paid preparer requirements in California and Oregon. Specifically, we found that both California and Oregon have requirements that paid preparers must meet before preparing returns; however, Oregon has more stringent requirements. According to our analysis of IRS tax year 2001 NRP data, Oregon returns were more likely to be accurate while California returns were less likely to be accurate compared to the rest of the country after controlling for other factors likely to affect accuracy. Administrative costs varied between California and Oregon: \$29 and \$123 per preparer, respectively, at the time of our review. We excluded from our review states that implemented paid preparer requirements because we wanted to assess unenrolled agents' quality and accuracy in unregulated states.

Comparison of State-Level Paid Preparer Requirements				
	Oregon	Maryland	California	New York
Registration	Yes	Yes	Yes	Yes
Qualifying education	Yes	Yes	Yes	No
Continuing education	Yes	Yes	Yes	No
Testing	Yes	Yes	No	No
Date of implementation	1973	2008	1974	2009

Analysis of returns filed in Oregon showed positive benefits. We found that a return filed by a paid preparer in Oregon was 72 more likely to be accurate than a comparable return filed by a paid preparer in the rest of the country. At the time of our review, in 2008, Oregon returns required approximately \$250 less of a change in tax liability than the average return in the rest of the country. For Oregon's then 1.56 million individual tax filers, this equated to over \$390 million more in federal income taxes paid in Oregon than would have been paid if the returns were as accurate as similar returns in the rest of the country. These results are consistent but do not prove the Oregon's regulations lead to some increased tax return accuracy.

Multiple bills were proposed in 2015 to regulate paid tax preparers. GAO recommended to Congress that if it agrees that significant preparer errors exists, it should consider legislation granting IRS the authority to regulate paid preparers. In September, 2015 a bill was introduced to regulate paid preparers. The Joint Committee on Taxation estimated that enacting such legislation would generate \$135 million over 10 years.

The GAO pointed out the following key reports for the Task Force's review and consideration:

- *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors*, GAO-14-467T (Washington, D.C.: Apr. 8, 2014).
- *Tax Preparer Regulation: IRS Needs a Documented Framework to Achieve Goal of Improving Taxpayer Compliance*, GAO-11-336 (Washington, D.C.: Mar 31, 2011).

# Illinois Tax Return Preparation Task Force Report

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- *Tax Preparers: Oregon's Regulatory Regime May Lead to Improved Federal Tax Return Accuracy and Provides a Possible Model for National Regulation*, GAO-08-781 (Washington, D.C.: Aug. 15, 2008).
- *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors*, GAO-06-563T (Washington, D.C.: Apr. 4, 2006).

## *National Society of Accountants*

John Ams and Stephen Haworth spoke to the Task Force on September 23, 2015.

John G. Ams, J.D., is the Executive Vice President and Chief Operating Officer for the National Society of Accountants in Alexandria, VA. He has over 40 years in the federal tax arena with expertise providing legislative and regulatory representation in accounting and federal tax matters to a variety of constituencies including individuals, non-profit organizations, and corporations. At NSA, a professional society whose members are professionals in the areas of accounting and taxation, he is responsible for all operations and provides information, education and guidance to his membership regarding IRS regulations and administrative concerns including the new IRS tax return preparer requirements. He has presented testimony to IRS on numerous occasions and was appointed a member of the IRS Advisory Council from 2012-14, where he served as the 2014 chair of the Professional Responsibility Subgroup. Mr. Ams is a Certified Association Executive, a member of Phi Beta Kappa, and holds a J.D. from Georgetown University Law Center and a BA, magna cum laude, from Michigan State University, East Lansing, MI.

Stephen C. Haworth is president and founder (1985) of Stephen C. Haworth, P.C., offering accounting and tax services in Columbus, Indiana with four full time employees and three seasonal employees. Steve was previously employed by the IRS for 11 years and was an examination group manager when he left. He is active with the Indiana Society of Accountants, currently serving as their Vice-President. He is currently services as the National Society of Accountants Administrative chair of the right to practice committee. He serves as director for the Indiana Tax Practitioner's Association and is a member of NATP and the Indiana CPA Society. He was previously a seminar speaker with Jennings Seminars and is in his 6<sup>th</sup> year of constructing the Indiana University Tax Practitioner Tax Institute. He is a contributing editor for the University of Illinois Federal Tax Workbooks.

**John G. Ams, on behalf of the National Society of Accountants, presented the following statement to the Task Force on September 23, 2015:**

Thank you for this opportunity to participate in this meeting of the Task Force and share our views regarding the possible regulation of tax return preparers in Illinois. My name is John Ams. I am here today in my capacity as the Executive Vice President of the National Society of Accountants. My background includes being a tax attorney for forty years, serving on the IRS Advisory Council, and last year serving as the chair of the Advisory Council's Office of Professional Responsibility Subgroup, which involves dealing with issues relating to the qualifications for individuals to represent taxpayers before the IRS.

# Illinois Tax Return Preparation Task Force Report

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The members of NSA, as well as members of other professional societies have long recognized that, if you are going to hold yourself out as a professional in the tax field, it takes substantial preparation. Given that a client's financial well being is often at stake, it is not unfair to have minimum standards. NSA believes that one of the minimum standards should be successfully passing a qualifying examination to test basic knowledge any paid preparer should know. If a barber or a beautician needs to pass a competency examination in Illinois – and they do – , then a tax preparer should as well, given that a poor effort by the preparer can have substantially worse effects on the client than a bad haircut.

Which examination? We all know about the credentials earned by taking and passing the Enrolled Agent examination, the CPA exam and the Bar exam. The IRS believes all three credentials provide evidence of minimal competency to prepare tax returns at the very least. The lawyers among us, me included, probably question that, but let's assume that is true. The question then becomes whether it is better to devise your own test or use an existing test to assess minimal competency.

I want to point out there are a number of examinations already offered whereby minimal competence or more than minimal competence in federal tax return preparation can be demonstrated. One such test offered by a state entity is the tax return preparer exam offered by the State of Oregon. Yet others are examinations offered by private non-profit entities such as the Accreditation Council for Accountancy and Taxation, also known as ACAT. ACAT's examinations have long been recognized for regulatory purposes in a number of states such as Minnesota, Iowa and Delaware, to name a few. I am unaware of any entity currently offering a test covering the preparation of state or local tax returns in Illinois.

Recently, the IRS developed its Annual Filing Season Program wherein it reviewed third party exams and announced that individuals who had taken and passed some of the existing exams – the Oregon and ACAT tests, among them – were exempt from taking an annual IRS exam because they had already demonstrated competence and were already required to take annual continuing education. I believe that individuals taking and passing the federal income tax return preparation tests offered by other states are also exempt.

Of course, another option would be to develop your own test. This is the course chosen by the state of Maryland recently and I believe it is instructive to relay some of that state's experience as you continue your deliberations here in Illinois. First, the development of questions can be an arduous, time consuming, expensive process. Each question must be slotted into a particular category with respect to each of the elements you wish to test such as the various types of income or the various types of deductions. Each question must then be psychometrically validated by experts so that you can be assured the question is asked in such a way that it is neither too difficult nor too easy and asks about the subject matter in a way that is meaningful and fair to the test taker. Furthermore, in order to minimize and maintain the integrity of the examination, it is vital to have a large bank of test questions so that numerous versions of the exam can be given. Most test providers in this area have thousands of test questions on which to draw to make up a test.



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Many tax return preparers in Illinois have already earned credentials demonstrating competency. Certainly, exemptions should be provided to CPAs, attorneys and enrolled agents. Exemptions should also be granted to individuals who have taken and passed an examination recognized by the IRS under its Annual Filing Season Program. Not only would you be assured that preparers are at least minimally competent, but would benefit Illinois residents as well since they would not have to take a second test to demonstrate that competence. At most, an individual should only have to take a test specifically on Illinois tax issues, should you deem it advisable to require such a test. Any individual granted an examination waiver should still be required to register, pay the appropriate fees and meet any other non-testing requirements. Another area to consider is continuing education. As we know, the Internal Revenue Code is changing all the time, and perhaps the tax code in Illinois is also subject to constant change. For that reason, annual continuing education is mandatory for anyone who prepares returns for compensation.

The IRS Annual Filing Season Program mandates 15 hours of tax-related continuing education annually for preparers who want to receive an IRS certificate of completion. I frankly believe this is too little and recommend 24 hours as a minimum. Furthermore, continuing education should be required even in the absence of an examination - it is that important. There are numerous continuing education providers in the market, many of them already recognized as providing quality education by the IRS or by the National Association of State Boards of Accountancy ("NASBA"). For example, all of the education offered by NSA for continuing education purposes meets the standards established by NASBA. This is the same standard recognized for purposes of maintaining the CPA license and ensures the education taken is of sufficient professional quality. Any education required for Illinois tax preparers should also meet minimum professional standards. I would therefore recommend that you include mandatory continuing education from a recognized provider in any regulatory scheme you develop. Furthermore, I believe the continuing education element be required in the short term even if the examination element is delayed for a few years while the decision is made on which test to offer. Frankly, an orderly, phased implementation of registration, education and/or testing over a two or three year period is unavoidable. A shorter time period is likely to unnecessarily disrupt the tax return filing process.

I have discussed both a testing and continuing education requirement. Another step is to determine what entity will be established to administer such requirements and the individuals to whom the entity will apply these requirements.

The only practical way to determine the number of individuals preparing Illinois tax returns is to mandate registration. A registration requirement should be made applicable to any preparer who prepares a minimum number of returns for Illinois residents. The minimum number, perhaps ten or more as specified in the New York preparer law, would provide a de minimis exception for the occasional preparer or the individual preparing returns for compensation for only a few clients. Registration would provide a means of tracking any education hours claimed by a preparer as well as the course content and course provider.

A separate entity should be created to be responsible for tax preparer regulation. NSA has long supported the establishment of an "administrative entity" to oversee tax preparers and

## Illinois Tax Return Preparation Task Force Report

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ensure that any fees paid by preparers are used for regulation and to educate consumers. NSA has been dismayed that a number of states are considering imposing fees on tax preparers merely as a means of enhancing state budgets. This does nothing to address competence and does nothing to educate consumers about the financial perils or possible criminal penalties they may face if they engage the services of unscrupulous preparers.

Absent a robust consumer education program, we are concerned that those individuals who do not comply with current requirements will not comply with any new requirements, either. A key is to bring those individuals into the tax preparer system and the best way to do so is to ensure that they suffer significant financial harm if they willingly flout the law. Taxpayers must also be educated, by a number of means, to understand that a paid preparer must sign a return. That is already the requirement at the federal level and should be a requirement at the state level as well. If we fail to bring these preparers into the system, we will merely be trying to increase compliance by the compliant and this effort will have missed its mark.

When fully implemented, tax preparer registration, a minimum competency exam at the front-end, required continuing education, significant penalties for non-registrants and aggressive enforcement by the State is the pro-active path and the path NSA would advocate if the Task Force moves forward with tax preparer regulation.

**Stephen C. Haworth submitted the following written statement to the Task Force on September 23, 2015:**

I wish to thank the committee for allowing my written comments in consideration of the registration and regulation of tax return preparers. I previously served as the NSA Chair of their Regulation Oversight Committee. That committee, with the assistance of our General Counsel, drafted a model bill for states tax preparer oversight. I wish to highlight some parts that we considered to be of importance.

1. Why is oversight and regulation necessary in Illinois? Has a recent need been realized or is this a reaction to other events?
2. In addition to the perceived need for protection of the consumer, consider the effect it will have on the community soon to be regulated. Will it accomplish the intended results?
3. What consumers require protection? Will preparers of business tax returns be regulated as well as preparers of individuals?
4. Who will be responsible for the oversight? Our committee felt strongly that it should be a separate board and not an assignment for either the state revenue department or the board that oversees the state accounting or attorney licensees. The former would be serving as the police, judge, and jury while the latter would be representing those not to be governed by these rules.
5. If licensing will require an examination, be cautious about the process and the administrator. Developing an examination is a difficult and time consuming process. Consider making use of those examinations already available. Consider allowing exemptions for those individuals that have already passed accepted examinations. The Accreditation Council for Accounting and Taxation has developed such a test that has



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been accepted by the IRS and the agency exempted those having passed an ACAT test from having to re-test.

6. Is the intent to disqualify those preparers that are currently incompetent or is it to raise the level of competence of all? If there is testing to be required, consider delaying the requirement of testing for three years in the hope that competence will increase and more individuals can pass the test. To facilitate the learning process annual continuing education requirements should be implemented immediately.

With the imposition of regulation, the tax return preparers will have additional responsibilities. The statutes often fail to provide the tax practitioner.

## *Illinois CPA Society*

On September 23, 2015, the Illinois CPA Society submitted the following “Position on State Paid Tax Return Preparer Oversight” to the Task Force.

### **Overview**

The Illinois CPA Society (ICPAS) expects nothing less than the highest levels of ethical conduct and professional standards for tax practitioners to protect the taxpayers it serves every day. To further those goals, ICPAS recommends and supports greater utilization of the existing Federal Preparer Tax Identification Number (PTIN) by the Illinois Department of Revenue and other state tax administering agencies to provide a state system of oversight and compliance of paid tax preparers.

- Support the utilization of the IRS’ PTIN numbers by the Illinois Department of Revenue (IDOR) as an oversight mechanism for state paid tax preparers.
- Oppose the creation of a separate regulatory scheme to regulate or credential paid tax preparers.

A new, separate regulatory scheme for paid tax preparers is unnecessary, ineffective and wasteful at a time when state resources are so scarce. Instead, preparers of Illinois tax returns should be required to place their federal PTIN on an Illinois prepared tax return. Adopting PTIN on Illinois prepared tax returns will create a uniform way to consistently track and regulate tax preparers for the work they do here and in other states where PTIN is used, and IDOR should be given the power to fine and bar state preparers who do not comply.

The federal tax preparer registration program is currently in limbo. Creating and implementing an additional state-based regulation/credentialing program at this time may create conflicts and confusion for tax preparers and taxpayers.

### **IDOR Utilization of Federal PTIN**

- Establish formal and regular communications channels with the IRS to share information about problems with returns prepared by certain tax preparers. IDOR and the IRS should

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establish a process to notify each other and other jurisdictions of any action taken against specific tax preparers.

- Perform compliance audits on returns when there is sufficient evidence that a return has been improperly prepared. If returns associated with a particular PTIN are found to consistently have problems, the tax preparer should be contacted and asked to explain the questionable positions taken.
- Through administrative rules, IDOR should be given the authority to bar PTIN holders from filing returns in the state, if after being afforded due process, the PTIN holder is found not to be competent, ethical, and/or in compliance with state or federal laws and requirements.
  - Additionally, the IDOR should be authorized to impose fines on or require corrective/remedial action. IDOR will also have the authority to refer remedial actions against CPAs, attorneys, and enrolled agents to respective licensing authorities and the IRS for appropriate action related to the licensee.

## **Benefits of federal PTIN utilization for Complimentary monitoring**

- Creates and utilizes a communications infrastructure between the IRS and the Illinois Department of Revenue to exchange information on paid tax preparers. The communications infrastructure can be expanded upon for information sharing between the IRS and states and information sharing between the states utilizing the PTIN number.
- Creates an oversight process of paid tax preparers by IDOR, an agency that possesses tax expertise, access to returns and investigative/ monitor mechanisms to identify bad tax preparers and/or tax preparers who cannot demonstrate a reasonable basis for tax positions.
- Just as Illinois tax returns are based on Federal tax returns, utilization of the PTIN for oversight continues close alignment to federal tax processes.
- Recognizes CPAs, attorneys, and enrolled agents' training, and licensure by not creating a separate tax preparer credential that would add to marketplace confusion.
- Recognition of paid tax preparers who follow state and federal tax regulations without imposing additional regulatory burdens and costs.

With these simple provisions, ICPAS believes the Illinois Department of Revenue can better protect taxpayers and enhance compliance, quality, and oversight. Using the PTIN system will avoid creating complicated and duplicative bureaucracies that do not serve the public interest or protect taxpayers.

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## *Saul Larsen*

Saul Larsen has worked in the non-profit, municipal and state government sectors for more than 15 years in both Arizona and Colorado. Saul currently works as a Policy Analyst for the Colorado Department of Regulatory Agencies, (DORA). At DORA, Saul's primary duties include conducting sunrise/sunset reviews for the state of Colorado, including researching, writing and testifying before Colorado legislative committees. Saul's research includes a wide range of professions and programs and spans over a decade of work inclusive of more than 30 reviews (both sunrise/sunset). Saul holds a Bachelor of Science, Political Science from the University of Colorado as well as a Master's of Public Administration, conferred by Arizona State University, Main, Tempe, AZ.

On October 16, 2015, Mr. Larsen spoke to the Task Force regarding Colorado Department of Regulatory Agencies, 2015 Sunrise Review: Paid Tax Preparers, October 15, 2015.<sup>16</sup>

Mr. Larsen explained the sunrise process of the Department of Regulatory Agencies which is utilized when an unlicensed profession seeks regulation or licensure. The purpose is to analyze whether regulation is necessary to protect the public. Reviews typically take one year and are used for a 2 year period. After the review, interested parties may run legislation regardless of the outcome of the review.

Summarizing the review, Mr. Larsen noted that DORA did not find a high amount of harm specific to Colorado consumers and the harms that were identified are currently addressed in the court system. Licensure is often viewed as the most restrictive form of legislation for Colorado as it sets minimum education, continuing education, and similar requirements, so a recommendation for the same must be taken with extensive analysis. The review analyzed news sources and complaints received by the Colorado Attorney General's Office, which were minimal. Ultimately, DORA does not recommend licensure of paid tax preparers as the identifiable frauds are not competency issues which could be cured by licensure.

## *Karen Hawkins*

Karen L. Hawkins served as the Director, Office of Professional Responsibility at the IRS from April, 2009 until July, 2015. Ms. Hawkins was in private practice as a member of the Law Offices of Taggart & Hawkins, PC for the 30 years before accepting then-Commissioner Shulman's invitation to assume the Director position. Ms. Hawkins is a past Chair of the Taxation Section of the State Bar of California, past chair of the ABA Taxation Subcommittee on Civil Penalties, and the IRS Liaison Meetings Committee. She served as a Director on the Council of the ABA Taxation Section and as the Section's Vice-Chair Professional Services. She stepped down as Chair-elect of the Taxation Section when she stepped into the OPR Director position at the IRS. Ms. Hawkins is also a Fellow of the American College of Tax Counsel.

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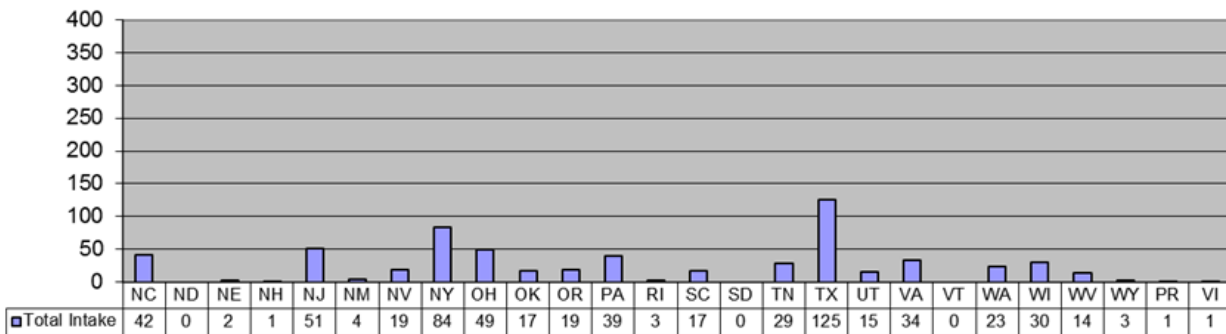
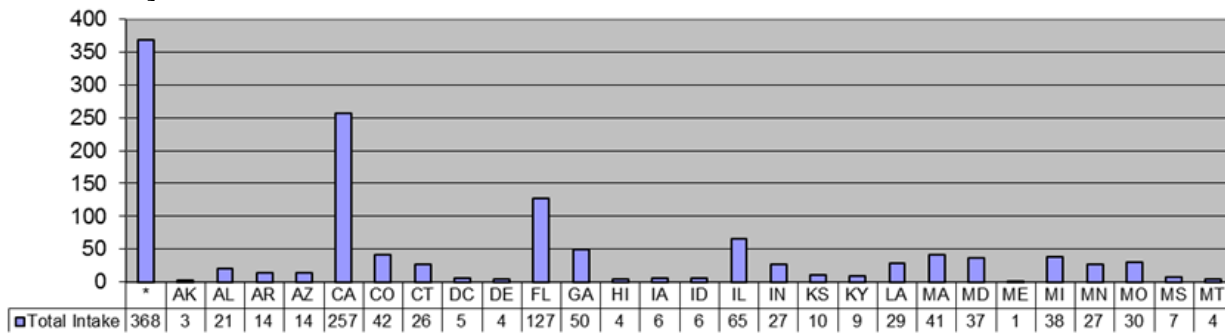
<sup>16</sup> Colorado Department of Regulatory Agencies, 2015 Sunrise Review: Paid Tax Preparers, October 15, 2015, provided by Guest Saul Larsen, <https://www.colorado.gov/pacific/dora/newly-released-reviews>.

# Illinois Tax Return Preparation Task Force Report

On October 16, 2015, Ms. Hawkins spoke to the Task Force regarding Regulation of Paid Tax Return Preparation Activities. Ms. Hawkins noted that in regards to tax preparation, fraud and competency are on a continuum and the IRS vision in regulation of tax preparers, starting in 2010, was to set minimum competencies with an exam and CE. The hope was that this would elevate the professionalism of tax preparation over time but also educate the public about licensure. The regulations were also meant to assist in identifying criminals over time. Further, given that victims of fraud often are willfully blind, regulation was meant to education such persons.

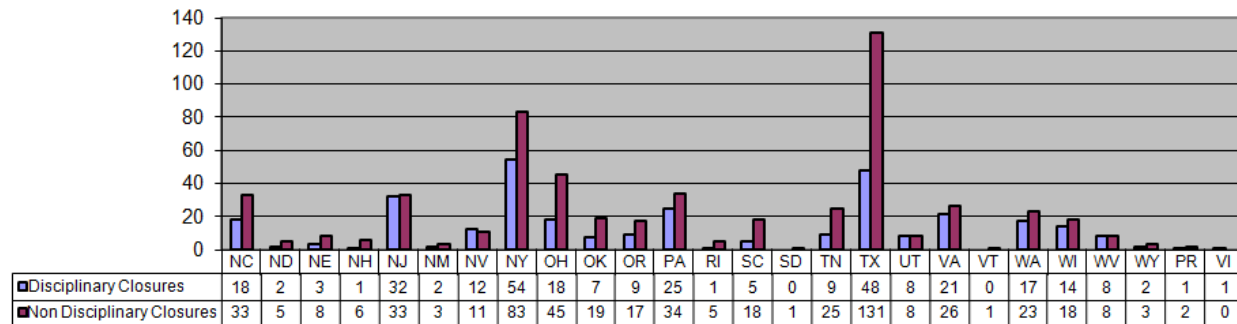
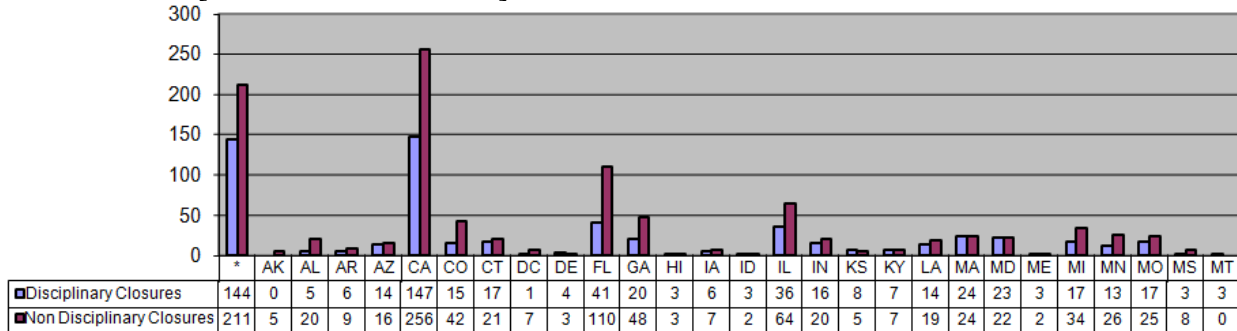
Ms. Hawkins provided the following disciplinary data:

Charts below are based on 1,894 Cases Opened Between 01/01/2012 and 12/31/2014, regardless of current status. Case types included: Conduct, Compliance, Hybrid, XP, Enrollment & PTIN Appeals, Reinstatement Requests, and Limited Practice (Rev Proc 81-38). [\* = No State in CCMS]

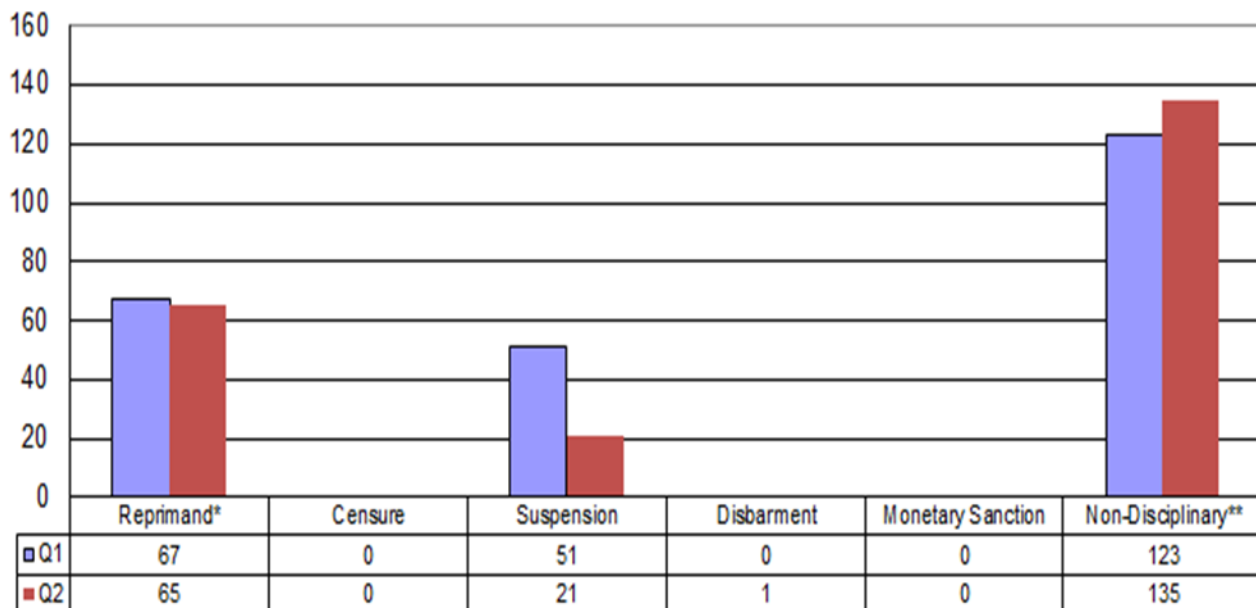


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Charts below are based on a total of 2,510 cases closed between 01/01/2012 and 12/31/2014, regardless of date opened. Case types: Conduct, Compliance, Hybrid, Expedited Processing, Enrollment Appeals, PTIN Appeals, and Reinstatement Request. Non Disciplinary: CWOA, CWOS, No 230 Violation, Referred Out, LOJ, Appeal and Reinstatement Decisions, Withdrawn. [\* = No State in CCMS]



## Fiscal Year 2015: Case Closures by Type



## Illinois Tax Return Preparation Task Force Report

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### Jan. 1, 2015 – Mar. 31, 2015: Case Disposition Results

<u>Activity</u>	<u>Attorney</u>	<u>CPA</u>	<u>EA</u>	<u>Other</u>	<u>Totals</u>
<b>Total Receipts</b>					<b>305</b>
• Disbarments (FAD/Consent)	-	1	-	-	<b>1</b>
• Suspensions (FAD/Consent)	1	-	-	-	<b>1</b>
• Expedited Suspensions	11	8	1	1	<b>21</b>
• DDA	-	-	2	-	<b>2</b>
• Censure	-	-	-	-	<b>0</b>
• Monetary Sanction	-	-	-	-	<b>0</b>
• Reprimand/Soft Letter					<b>41</b>
• Cease & Desist					<b>13</b>
• CWOS, LOJ, NCOA, CWOA					<b>137</b>
• Reinstatement Requests					<b>9</b>
• Appeals					<b>4</b>
<b>Total Dispositions</b>	<b>12</b>	<b>9</b>	<b>3</b>	<b>1</b>	<b>229</b>

### OPR Jan - June 2014 Discipline Results

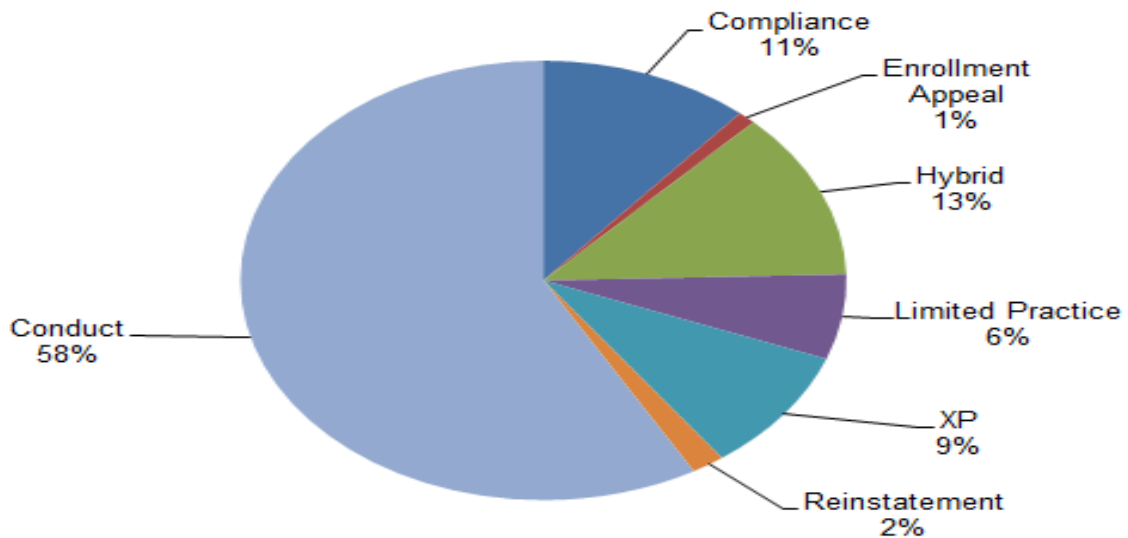
<u>Activity</u>	<u>Attorney</u>	<u>CPA</u>	<u>EA</u>	<u>Other</u>	<u>Totals</u>
• Total Receipts					<b>357</b>
• Disbarments (FAD/Consent)	1	-	2	2	<b>5</b>
• Suspensions (FAD/Consent)	1	3	2	1	<b>7</b>
• Expedited Suspensions	6	14	4	-	<b>24</b>
• DDA	1	4	-	4	<b>9</b>
• Censure	-	2	-	-	<b>2</b>
• Monetary Sanction	-	-	-	1	<b>1</b>
• Reprimand/Soft Letter	10	33	21	31	<b>95</b>
• Cease & Desist	-	4	-	4	<b>8</b>
• CWOS, CWOA, Referred, Other					<b>261</b>
• Reinstatement Request					<b>12</b>
• Total Dispositions					<b>424</b>

# Illinois Tax Return Preparation Task Force Report

## OPR Discipline: 1998 – 2014

CY	CENSURE				SUSPENSION				DISBARMENT				REPRIMAND/SOFT LETTER			
	Atty	CPA	EA	Other	Atty	CPA	EA	Other	Atty	CPA	EA	Other	Atty	CPA	EA	Other
1998	0	0	0	0	44	115	6	0	0	4	1	0				
1999	0	0	0	0	12	14	2	0	0	2	1	0				
2000	0	0	0	0	15	41	4	0	0	2	0	0				
2001	0	0	0	0	1	11	3	0	0	1	0	0				
2002	0	0	0	0	22	42	7	0	8	12	2	0				
2003	0	4	0	0	110	34	13	0	1	2	3	0				
2004	1	8	8	0	65	33	47	0	0	4	0	0				
2005	4	5	1	0	113	64	10	0	0	1	0	0				
2006	5	5	3	0	239	103	13	0	2	4	0	0				
2007	3	5	2	0	133	97	17	0	1	4	2	0				
2008	2	7	5	0	242	106	14	0	0	5	0	0				
2009	1	0	1	0	182	68	12	0	5	2	2	0	17	64	44	0
2010	0	0	1	0	95	36	9	0	0	3	1	0	24	97	121	0
2011	0	0	1	0	106	43	6	0	2	3	1	0	17	70	45	0
2012	1	0	1	0	33	21	7	0	0	1	0	0	52	60	63	23
2013	0	2	0	2	17	26	5	6	1	4	4	2	72	84	44	41
2014	0	5	1	1	47	45	14	1	1	0	2	2	47	84	43	64
<b>TOTAL</b>	<b>17</b>	<b>41</b>	<b>24</b>	<b>3</b>	<b>1476</b>	<b>899</b>	<b>189</b>	<b>7</b>	<b>21</b>	<b>54</b>	<b>19</b>	<b>4</b>	<b>229</b>	<b>459</b>	<b>360</b>	<b>128</b>

## Fiscal Year 2015: Case Mix

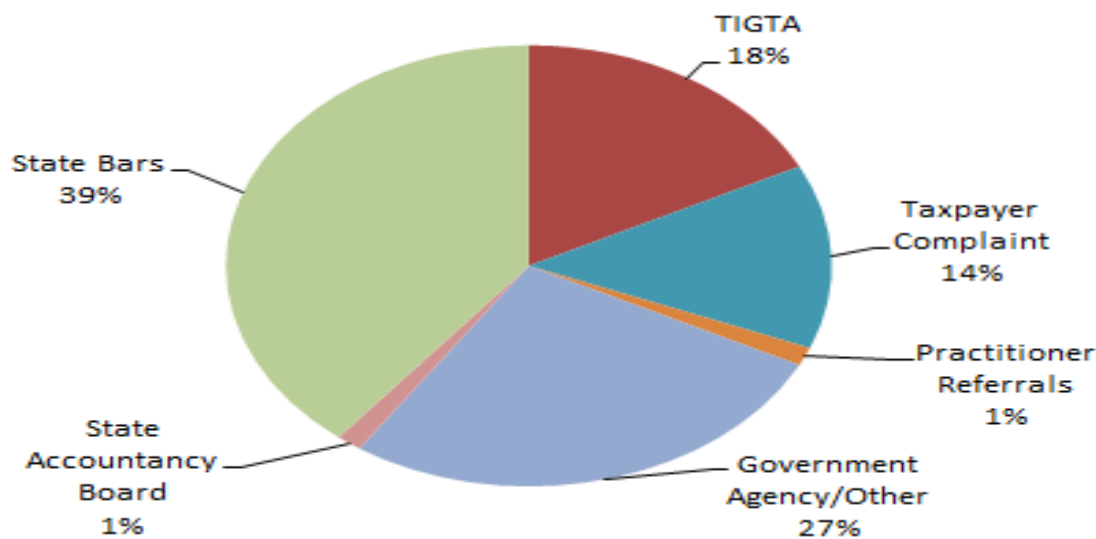




# Illinois Tax Return Preparation Task Force Report

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## Fiscal Year 2015: External Referrals by Source



## Unlicensed Tax Return Preparers

Ms. Hawkins noted Rev. Proc. 81-38 (8/31/81 superseding versions dating to mid-1950's) which permits unenrolled tax return preparers to represent taxpayers during examination if the tax return preparer prepared and signed the return under audit. Rev. Proc. 81-38 was modified and superseded by Rev. Proc. 2014-42 for returns and claims for refund prepared and signed after December 31, 2015. Delegation Order 25-16 (Rev 1) gives OPR exclusive disciplinary oversight for violations under both Rev. Procs.

## Regulatory Issues

Ms. Hawkins raised various regulatory issues for the Task Force's consideration including whether statutory authority for regulation under state law is available and whether issues of preemption of federal law need to be considered. She also noted states must consider treatment for those already licensed, lawyers, CPAs, and enrolled agents. For example, the New York model exempts lawyers, CPAs and enrolled agents from discipline which may cause issues. Additionally, there must be a consideration of the definition of "commercial" preparer versus "paid" in all its contexts. Other topics for regulators to examine include the scope of tax practices, such as signing vs. non-signing preparers; mere preparation or advising, representation; state vs. federal tax violations (i.e. preemption issues); and conduct in course of providing services vs. conduct which speaks to overall fitness.

## The IRS "Experience"

Ms. Hawkins noted various relevant cases, including: (1) *Loving vs. Commissioner*, a successful preemptive challenge to testing and CPE requirements morphed into injunction against regulating all "mere" tax return preparation; (2) *Ridgley vs. Lew*, a successful preemptive challenge to regulation of contingent fees for "ordinary" refund claims morphed into injunction against regulation of anyone (including Circular 230 practitioners) preparing "ordinary" refund

## Illinois Tax Return Preparation Task Force Report

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claims; (3) *Sexton vs. Hawkins*, a pending preemptive effort by previously suspended lawyer to prevent OPR investigation to determine if there are on-going violations of Cir 230; (4) *Davis vs. Commissioner* which settled but addressed Circular 230 discipline vs. IRS Efile “discipline;” (5) *Steele v. United States/ Dickson v. United States*, pending challenges to 1) the validity of initial and annual renewal PTIN fees, 2) the amount of PTIN fees, and 3) the information that must be provided to obtain and renew a PTIN; and (6) *AICPA v. IRS*, a pending challenge to the Annual Filing Season Program as in contravention of the *Loving* decision.

### *Jeremy Stohs*

Jeremy Stohs joined H&R Block in 2012 as Director of Government Relations. H&R Block is the world’s largest tax services provider, preparing 1 in every 7 U.S. tax returns in retail offices and through do-it-yourself offerings. Based in H&R Block’s Kansas City headquarters, Jeremy directs state government relations, PAC, and grassroots activity, as well as assisting with federal relations for the company. Jeremy was previously Deputy Legislative Director for U.S. Senator Jerry Moran (KS) in Washington, D.C. During nearly a decade of working on Capitol Hill, he developed policy and advised on a diverse portfolio of policy issues and congressional committee work in both the U.S. House of Representatives and U.S. Senate. Jeremy received his bachelor’s degree from Kansas State University and Master of Public Policy from The George Washington University.

On October 16, 2015, the Mr. Stohs submitted the following “Statement of H&R Block Regarding State Regulation of Commercial Tax Preparers to the Tax Return Preparation Task Force” to the Task Force.<sup>17</sup>

H&R Block is the world’s largest consumer tax services provider. Last year, we filed more than 20 million U.S. individual income tax returns--about 13 million returns in our more than 10,000 offices and another 7 million through our do-it-yourself software offerings. We filed more than 860,000 returns for Illinois residents in nearly 443 company- and franchise-owned offices.

This year, more than 60% of U.S. taxpayers relied on paid tax preparers to file their income tax returns.<sup>18</sup> As of October 1, 2015, of the more than 715,000 individuals who currently hold Preparer Tax Identification Numbers with the Internal Revenue Service (IRS), less than 297,000 have a professional credential.<sup>19</sup> The remaining 418,000 uncredentialed preparers are generally not subject to federal standards, including minimum testing or education requirements. Taxpayers should have an objective way to know that the preparer they select, for what may be their most significant financial transaction of the year, is not only competent to accurately prepare their returns, but also trustworthy with the taxpayer’s personal information. Minimum

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<sup>17</sup> See also, Tax Institute at H&R Block’s Tax Return Preparer Standards: An Important Tool to Improve Tax Return Accuracy, Combat Fraud, and Protect Consumers, April 2014, [http://www.finance.senate.gov/imo/media/doc/HR%20Block%20Testimony%20\(Cobb\).pdf](http://www.finance.senate.gov/imo/media/doc/HR%20Block%20Testimony%20(Cobb).pdf).

<sup>18</sup> <http://www.irs.gov/uac/Newsroom/Filing-Season-Statistics-for-Week-Ending-Sept.-25,-2015>, Accessed October 7, 2015.

<sup>19</sup> <http://www.irs.gov/Tax-Professionals/Return-Preparer-Office-Federal-Tax-Return-Preparer-Statistics>, Accessed October 7, 2015.

## Illinois Tax Return Preparation Task Force Report

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standards for paid tax preparers is the most obvious way to protect consumers from incompetent and unethical tax preparers, and to help reduce improper payments and fraudulent tax returns.

We believe the most effective way to establish minimum standards is through a federal program. A federal program would ensure all paid tax preparers nationwide are subject to the same uniform standards. A patchwork of state programs, each with its own prescribed standards and related fees, could be burdensome for those preparers who prepare returns for more than one state. For example, a tax preparer who prepares returns for military service men and women may file returns for multiple states each day. The requirement to meet the standards of, and pay a fee to, every state that imposes minimum standards may discourage the preparer from continuing to prepare returns for service members. Fewer preparers available to assist could inconvenience the military population.

However, in the absence of national minimum standards, tax preparers in 46 states, including those assisting taxpayers in Illinois, will continue preparing returns with little oversight. Until such time that the U.S. Congress sets such standards, we support the establishment of state programs to protect taxpayers now.

We recommend the state of Illinois work with members of the tax preparation industry to prescribe a program that is effective and cost-efficient for both the State and the state's professional tax preparers. An effective program would include preparer registration, a demonstration of competency through testing and education, and background screening. Cost efficiency would be maximized by approving examination and background checks from third-party providers rather than the Department creating and administering its own, and by utilizing IRS approved continuing education providers.<sup>20</sup> The program should also exempt those preparers from the background check and examination requirements if they have a federal or state credential or are subject to comparable oversight by another state.

Thank you for the opportunity to provide our perspective and for your consideration. Please do not hesitate to contact me by e-mail at [jeremy.stohs@hrblock.com](mailto:jeremy.stohs@hrblock.com) should you have any additional questions or would like additional information.

*Irwin Nadel*

Irwin Nadel joined the Division of Revenue and Enterprise Services on July 6, 1998. As Chief of Operations, Records Management Services e-File ePay Irwin is responsible for ensuring the public records are administered with integrity, in accordance with state law, standards and procedures. Irwin is also responsible for supporting the Division's Enterprise e-File platform. This includes, but is not limited to the Fed/State Electronic Filing Program, Bulk Filing, and Web application development and support. Prior to joining the Division, Irwin was employed by the Department of Treasury, Office of Management and Budget as an Application Developer and Systems Analyst. Irwin joined OMB on October 22, 1988. Before joining OMB he was employed by The Department of Law & Public Safety, Division of Motor Vehicles as a Systems Analyst. Irwin began working for Motor Vehicles on May 8, 1978. He has spent the last 37 years

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<sup>20</sup> A list of IRS approved continuing education providers is available here: <https://ssl.kinsail.com/partners/irs/publicListing.asp>.

## Illinois Tax Return Preparation Task Force Report

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as a member of New Jersey State Government. Irwin attended Rider College majoring in Decision Science.

On October 16, 2015, Mr. Nadel spoke to the Task Force regarding the New Jersey's e-file requirements for paid return preparers. Paid tax preparers that prepare 11 or more New Jersey individual gross income tax resident returns including those filed for trusts and estates during the tax year must use electronic methods to file those returns. New Jersey nonresident, part year resident, amended, and prior year returns are not included in the mandate at this time. Anyone who prepares a return for a fee is considered a paid preparer. The determination is made whenever the "Paid Preparer's" information is completed on any New Jersey Resident Tax Return. Additionally, a return of this type will be counted towards the threshold for that preparer.

It is the responsibility of the tax practitioner to determine if they will or will not meet the mandate requirement. The New Jersey Division of Taxation has the right to review those instances wherein a tax practitioner has failed to comply with the requirements and assess a penalty of \$50 for each return the tax practitioner fails to file electronically when required to do so. The mandate applies to tax practitioners who file NJ1040 or NJ1041 forms, regardless of where the tax practitioner is located. Under New Jersey tax law, the taxpayer is responsible for the accuracy of the information on his/her tax return, for filing it timely and for timely payment of any tax owed. A tax practitioner who files New Jersey tax returns and/or pays New Jersey taxes on behalf of either an individual or a business client does not become personally responsible for payment of the client's liabilities. This clarification applies only for New Jersey purposes and does not affect responsibilities to the IRS or any other state.

# Illinois Tax Return Preparation Task Force Report

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## Task Force Recommendation

The following majority of quorum of members of the Illinois Tax Return Preparation Task Force makes the following recommendation in consideration of the witness testimony presented to the Task Force, the various reports and documentation presented to the Task Force, and the Task Force members' extensive knowledge of the tax industry:

- ✓ Jay Stewart, Chairperson, *Director of the Division of Professional Regulation*
- ✓ Geoffrey Harlow, Member
- ✓ Representative Natalie Manley, Member
- ✓ Senator John Mulroe, Member
- ✓ Jim Nichelson, Member, *Assistant General Counsel of the Department of Revenue*
- ✓ Michael T. Specha, Member

The Task Force recommends:

- (1) the Internal Revenue Service's Preparer Tax Identification Number ("PTIN") be utilized on Illinois tax returns prepared by a compensated person;
- (2) the General Assembly consider granting the Illinois Department of Revenue enhanced enforcement authority against preparers who file inaccurate or fraudulent returns; and
- (3) relevant state agencies and interested stakeholders are encouraged to educate the public regarding the importance of utilizing a competent tax professional.

### **The Preparer Tax Identification Number System**

The Task Force recommends that all paid tax return preparers obtain a PTIN, including anyone who prepares all or substantially all of any Illinois tax return or refund claim for compensation. Per the IRS' regulations, attorneys, CPAs, enrolled actuaries, enrolled agents, enrolled retirement plan agents, and other similarly qualified persons are required to obtain the number. The PTIN must be noted on all Illinois tax returns or refund claims prepared by the paid tax preparer. Individuals must complete an application including explanation of any felony convictions or problems with individual or business tax obligations. The individual must also pay a nominal user fee and renew the number annually for a nominal maintenance fee.

The PTIN requires paid tax preparers to be held accountable in an effort to prevent identity theft. The PTIN is meant to assist IDOR in identifying paid tax preparers, or even tax payers, with a high frequency of fraud and/or errors. Given the high frequency of individuals filing taxes online, this would be simple from a logistical standpoint for IDOR to track bad actors. Further, the PTIN links IDOR to the IRS, allowing for better communication and concentrated efforts against challenging issues. Of crucial importance during this time, the costs would be minimal requiring that the IDOR simply work with the IRS' existing structure to track paid tax preparers.

# Illinois Tax Return Preparation Task Force Report

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As noted by the AICPA, compliance audits may be performed on returns with qualifying evidence of fraud or error. If returns associated with a particular PTIN are found to consistently have problems, the tax preparer should be held accountable by discipline, fine, or other means as determined appropriate by IDOR. For example, IDOR may deem it appropriate to deny a refund anticipation loan if needed. Accordingly, the Task Force recommends that the General Assembly grant IDOR the authority and enforcement ability to discipline PTIN holders.

Ultimately, mirroring the IRS' PTIN system has the following benefits:

- Creation of a linked State and Federal network to address fraud within the tax return arena
- Mechanism to address identify fraud, a growing concern as data breaches targeted at governmental entities continue to rise
- Minimal costs to the State of Illinois and consumers
- Avoidance of burdensome regulation for tax preparers practicing across state lines and on both Illinois and Federal returns

## **The Inadequacies of Licensure**

The Task Force finds that the benefits of licensure and/or registration of paid tax preparers do not outweigh the associated costs and will fail to address the prevalence of errors and fraud within the tax industry.

All empirical data analyzed by the Task Force regarding Illinois Tax preparers indicates that there are minimal consumer complaints regarding paid preparers. IDOR reported a nominal number of complaints regarding tax preparers every year and estimates that it receives 20-30 complaints on an annual basis. The Illinois Attorney General notes an average of fewer than 100 complaints in the past five years. The City of Chicago noted that fewer than 20 complaints were received in recent years regarding tax preparers. Even the State of Oregon, with the most robust history of tax preparer regulation across the United States, reports an average of less than 35 complaints per year over the past 5 years. Additionally, the State of Colorado recently recommended against licensure of preparers, citing the lack of complaints. The minimal amount of consumer complaints is indicative of the fact that licensure is not the solution to the issues associated with preparers.

As indicated by Task Force witnesses, more often than not, the taxpayer himself or herself is implicit in this fraud, meaning that the consumer would not come forward with a complaint in the event of licensure of preparers. Ultimately, there is a genuine concern and fear that licensure of paid preparers would further drive this fraud underground, resulting in more returns designated as "self prepared."

Although the National Consumer Law Center presented empirical evidence regarding the frequency of errors, none of the evidence related to Illinois returns, which are generally known as more user friendly and simpler returns when compared to other states. Additionally, it is the Task Force's opinion, and the opinion of many within the tax industry, that licensure requiring examination and/or continuing education has minimal impact on the frequency of errors. It is



## Illinois Tax Return Preparation Task Force Report

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commonplace within the industry that errors exist on almost every tax return due to the complexity of tax law and the ever evolving tax code. Further, according to the GAO analysis of IRS tax year 2001, California returns, a state with strict licensure guidelines for tax preparers, were less likely to be accurate compared to the rest of the country after controlling for other factors likely to affect accuracy. This means that a state with licensure had an even higher rate of error than states without licensure. The GAO also noted that its studies do not prove that even Oregon's lengthy history of licensure leads to increased tax return accuracy. Even IRS employees tasked with answering a single tax question have high error rates, strongly indicating that state licensure will have minimal effect on error frequency.

The IRS is open in its push to expand the authority struck down by the *Loving* decision and seeks to create a mandatory federal tax return preparer registration/licensure. In the likely event that the IRS is successful in this endeavor, this would render a state licensure redundant.<sup>21</sup> The Joint Committee on Taxation estimated that enacting such legislation would generate \$135 million over 10 years. Assuming the Joint Committee on Taxation's estimate is accurate, applying this data to the State of Illinois using the Illinois tax rate and its amount of taxpayers means additional revenue to Illinois in one year of an estimated \$150,000.

Ultimately, a paid tax preparer licensure has the following problematic issues:

- Drive fraudulent and “closeted preparers” further underground to increase deceptive practices
- Pass the cost of licensure onto consumers, who will ultimately pay more for tax preparation services or chose to self prepare, resulting in a loss of business for the tax preparers in Illinois
- Failure to adequately correct the frequency of errors, which are common place due to the complexity of the tax industry
- Create high costs for the State of Illinois in the development of a licensing system, which may ultimately be redundant upon the likely creation of a national IRS licensure/registration
- Illinois would have no jurisdiction over federal returns, making state licensure virtually useless at the federal level.

### **Education of Illinois Consumers**

Lastly, the Task Force encourages IDOR and other interested stakeholders to educate consumers to be diligent in the selection of paid tax preparers. As raised in the Task Force's March 3, 2015 statement, referenced in this report, Illinois consumers need assistance in choosing a preparer wisely. Taxpayers should be wary of promotional offers of free tax preparation by cell phone companies, car dealerships and other commercial enterprises. The primary goal of these businesses is to sell a product or service as opposed to the quality and accuracy of the tax return and the expertise of the tax preparer.

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<sup>21</sup> At this time, the Task Force declines to make an opinion as to the appropriateness of a federal licensure program, given that this issue was not relevant to the statutorily assigned agenda of the Task Force.



# Illinois Tax Return Preparation Task Force Report

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## Task Force Dissent

We dissent with the Illinois Tax Return Preparation Task Force's recommendation that the State of Illinois should not create or enact minimum standards for non-credentialed tax return preparers.

By way of background, in 2015, more than 60% of US taxpayers who filed an individual income tax return sought the assistance of a compensated tax return preparer.<sup>22</sup> As of October 1, 2015, 58% of paid tax return preparers were non-credentialed<sup>23</sup> (i.e. not subject to minimum testing or education standards or ethical oversight).

The Task Force heard many hours of testimony from various guests, as set forth in this Report. A common theme among these guests was how consumers were harmed by shoddy tax return preparation; sometimes through the tax return preparer's fraudulent actions and other times because the tax return preparer lacked sufficient training and education to properly complete a tax return.

Engaging a professional to prepare a tax return may be one of the most significant financial transactions in which an Illinois taxpayer engages. It is our contention that Illinois taxpayers should have an objective way to determine that the tax return preparer they select has met a basic standard of competency and is subject to a stringent code of ethics.

It is our belief that the most effective way to establish minimum standards and foster ethical conduct is through a federal program. However, in the absence of federal minimum standards, we believe it is in the best interests of Illinois taxpayers for the state of Illinois to establish minimum standards and a code of ethics. We believe such oversight and minimum standards will provide Illinois taxpayers better service and protections.

After careful consideration of the testimony presented and discussion among the Task Force members, it is our recommendation that, absent the establishment of federal minimum standards, the Illinois General Assembly enact minimum qualification, education and ethical standards for non-credentialed tax return preparers.

Respectfully,

Stephen W. DeFilippis, EA  
Task Force Member

Andrew Jennison  
Task Force Member

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<sup>22</sup> <http://www.irs.gov/uac/Newsroom/Filing-Season-Statistics-for-the-Week-Ending-Sept.-25-2015>.

<sup>23</sup> [http://www.irs.gov/Tax-Professionals/Return-Preparer-Office-federal-Tax-Return\\_Preparer-Statistics](http://www.irs.gov/Tax-Professionals/Return-Preparer-Office-federal-Tax-Return_Preparer-Statistics), Accessed October 7, 2015.

# Illinois Tax Return Preparation Task Force Report

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## Acknowledgments

The Illinois Tax Return Preparation Task Force would like to thank the following task force members and participants who assisted in Task Force meetings and this report.

### Illinois Return Preparation Task Force

Jay Stewart, Chairperson, *Director of the Division of Professional Regulation*

Stephen W. DeFilippis, Board Member

Geoffrey Harlow, Board Member

Andrew Jennison, Board Member

Representative Natalie Manley, Board Member

Senator John Mulroe, Board Member

James T. Nichelson, Board Member, *Acting General Counsel of the Department of Revenue*

Michael Specha, Board Member

### Department of Financial and Professional Regulation of the State of Illinois

Bryan Schneider, Secretary of the Department of Financial and Professional Regulation

Martha Reggi, General Counsel to the Task Force

John Webb, Legislative Liaison for the Department

Alexander Hemsley, Office of the Secretary

### Department of Revenue of the State of Illinois

Connie Beard, Director of the Department of Revenue

Mitch Lifson, previous General Counsel for the Department of Revenue

Mike Pieczonka, previous General Counsel for the Department of Revenue

### Task Force Meeting Guest Speakers

Edward S. Karl, American Institute of CPAs, Vice President – Taxation

Thomas J. Walsh, Thomas J. Walsh Consulting LLC

Howard D. Ellison, Wermer Rogers Doran & Ruzon, LLC

Matthew Frost, City of Chicago

Vijay Raghavan, Office of the Attorney General

Chi Chi Wu, National Consumer Law Center

Doug Blackstone, Executive Director of the Maryland Board of Individual Tax Preparers

Richard Ernst, Deputy Commissioner of the Office of Professional Responsibility of the New York State Department of Taxation and Finance

Howard Moyes, Executive Director of the Oregon Board of Tax Preparers

# Illinois Tax Return Preparation Task Force Report

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Celeste Heritage, Administrator of the California Tax Education Council  
Bob Kerr, National Association of Enrolled Agents  
Stan Hutchinson, Tax Tech Inc.  
Sue Gaston, Director Continuing Education Management for the Return Preparer Office of the IRS  
Carol Campbell, RPO Director of the IRS  
Martin Lieberman, Community Currency Exchange Association  
Michael Frizel, Community Currency Exchange Association  
Eric Sternberg, Center for Economic Progress  
James McTigue, Government Accountability Office, Director of Strategic Issues  
Libby Mixon, Government Accountability Office  
John Ams, EVP National Society of Accountants  
Steve Haworth, Indiana State Regulatory Oversight  
Paul Harrison, Center for Economic Progress  
David Marzahl, Center for Economic Progress  
Saul Larsen, State of Colorado Analyst  
Karen Hawkins, formerly of the IRS Office of Professional Responsibility  
Jeremy Stohs, Director of Government Relations of H&R Block  
Irwin Nadel, New Jersey Department of Treasury

## Task Force Meeting Guests

Dylan Bellisle, Center for Economic Progress  
George Crouse, Independent Accountants Association of Illinois  
Sherry Dalgard, Independent Accountants Association of Illinois  
Michael Frizel, Community Currency Exchange Association  
Marty Green, Illinois CPA Society  
Claireen Herting, Illinois Board of Examiners  
Rhonda Kodjayan, Illinois Board of Examiners  
Richard Lockhart, Independent Accountants Association of Illinois  
Patrick McGinnis, Independent Accountants Association of Illinois  
Daniel E. Setters, Independent Accountants Association of Illinois

## Task Force Participants

Russ Friedwald, Illinois Board of Examiners  
Kelly Gabliks, previous Interim Director of the Oregon Board of Tax Practitioners  
Anthony Johnson, New Jersey Department of Treasury  
Kimberly A. Stark, Chief of Staff, Office of Senator John G. Mulroe  
Lisa Tomko, Chief of Staff for Natalie A. Manley, State Representative 98th District

# Illinois Tax Return Preparation Task Force Report

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## Exhibits

The following are attached as exhibits to the Task Force Report:

1. Task Force Meeting Minutes
  - a. November 24, 2014
  - b. December 15, 2014
  - c. December 19, 2014
  - d. February 10, 2015
  - e. June 25, 2015
  - f. July 30, 2015
  - g. August 20, 2015
  - h. September 23, 2015
  - i. October 16, 2015
  - j. November 16, 2015
2. Oregon Board of Tax Practitioners Disciplinary Log 2013, 2014, and 2015 provided by Guest Howard Moyes.
3. Report of the Commissioner's Advisory Group Meeting Subgroup on Regulation and Registration of Commercial Tax Return Preparers, June 16-17, 1994.
4. National Society of Accountants Tax Practitioners Bill of Rights, provided by Guest Stephen Haworth.
5. Tax Preparer Oversight Act, model legislation, provided by Guest Stephen Haworth.

# Illinois Tax Return Preparation Task Force Report

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## EXHIBIT 1(A)

### Illinois Department of Financial & Professional Regulation, Division of Professional Regulation Tax Return Preparation Task Force Minutes

Date: November 24, 2014

Call to Order: 9:38 a.m. – Jay Stewart - Chairperson

Location: IDFPR – Division of Professional Regulation  
100 W Randolph, 9<sup>th</sup> Floor  
Room 9-171A  
Chicago, IL 60601

Board Members Present: Jay Stewart, Chairperson; Geoffrey Harlow, Board Member; Mitch Lifson, Board Member; Representative Natalie Manley, Board Member; Senator John Mulroe, Board Member; and Michael Specha, Board Member

Board Member(s) Absent: N/A

Staff Members Present: Martha Reggi, Associate General Counsel

Guests: Marty Green, Illinois CPA Society, via phone; Daniel E. Setters, Accounting Plus Tax Solutions; Dick Lockhart

Topic	Discussion	Action
Roll Call	Jay Stewart, present Geoffrey Harlow, present Mitch Lifson, present Representative Natalie Manley, present Senator John Mulroe, present Michael Specha, present	
Introductions & Organization	Each Board member, Department staff, and guest introduced themselves. Stewart provided a brief overview of the Open Meeting Acts and Freedom of Information Act requirements relevant to the Task Force.	
General Overview	Stewart provided a brief analysis of SB2774 and the requirements of the Task Force, including the requirement to meet three (3) times in 2014 and the preparation of the Task Force’s report, due December 2015. Stewart explained that the Department’s counsel, Martha Reggi, will assist in drafting the Task Force’s report.	
Chairperson Election		A motion was made by Mulroe / seconded by Specha to elect Stewart as Chairperson. Motion passed unanimously.
Analysis of Task Force’s Future Action	The Task Force discussed general scheduling and Stewart encouraged the Task Force to notify potential witnesses and interested third parties to attend upcoming meetings. Martha Reggi provided a general overview of tax return preparer regulation in other states, the IRS’ involvement in tax return preparer registration, and analysis of the Task Force’s goals. Public guest Daniel Setters asked whether the two additional	

# Illinois Tax Return Preparation Task Force Report

	Task Force's member spots would be filled and Stewart responded that the Task Force is awaiting appointment of two additional nominees. Public guest Marty Green provided his analysis of the history of SB2774 in light of a request from Mulroe.	
Adjournment		There being no further business to discuss, a motion was made by Mulroe / seconded by Specha to adjourn at 10:24 am. Motion passed unanimously.

## EXHIBIT 1(B)

Illinois Department of Financial & Professional Regulation, Division of Professional Regulation  
Tax Return Preparation Task Force Minutes

Date: December 15, 2014

Call to Order: 1:07 p.m. – Jay Stewart - Chairperson

Location: IDFPF – Division of Professional Regulation  
100 W Randolph, 9<sup>th</sup> Floor  
Room 9-375  
Chicago, IL 60601

Board Members Present: Jay Stewart, Chairperson; Geoffrey Harlow, Board Member; Mitch Lifson, Board Member; Senator John Mulroe, Board Member; and Michael Specha, Board Member

Board Member(s) Absent: Representative Natalie Manley, Board Member

Staff Members Present: Martha Reggi – Associate General Counsel; Munaza Aman – Staff Attorney

Guests: Marty Green, Illinois CPA Society, via phone; Patrick McGinnis, VP Independent Accountants Association of Illinois, Sherry Dalgaard, Past President, Independent Accountants Association of Illinois; George Crouse, Past President, Independent Accountants Association of Illinois

Topic	Discussion	Action
Introductions	Each Board member, Department staff, and guest introduced themselves.	
Approval of November 24, 2014 open meeting minutes.		A motion was made by Specha / seconded by Harlow to approve November 24, 2014 open meeting minutes. Motion passed unanimously.
Analysis of Current Status	Martha Reggi provided power point presentation of analysis of current status of tax preparer regulations in other states, City of Chicago, the IRS and AG complaints.  Discussion regarding an analysis of reasons for licensure	

# Illinois Tax Return Preparation Task Force Report

	in other states for analysis in Task Force report, change in tax preparer IRS due diligence law, inviting consumer advocates and other interested parties to attend future meetings to address such issues, and analysis of hearings relating to SB2774.	
Analysis of Task Force's Future Action	The Task Force discussed general scheduling and Stewart encouraged the Task Force to notify potential witnesses and interested third parties to attend upcoming meetings. A general list of potential witnesses will be prepared for the upcoming meeting.	
Adjournment		There being no further business to discuss, a motion was made by Specha / seconded by Harlow to adjourn at 1:48 pm. Motion passed unanimously.

## EXHIBIT 1(C)

Illinois Department of Financial & Professional Regulation, Division of Professional Regulation  
Tax Return Preparation Task Force Minutes

Date: December 19, 2014

Call to Order: 3:07 p.m. – Jay Stewart - Chairperson

Location: IDFPR – Division of Professional Regulation  
100 W Randolph, 9<sup>th</sup> Floor Room 9-171A  
Chicago, IL 60601

Board Members Present: Jay Stewart, Chairperson; Geoffrey Harlow, Board Member; Mitch Lifson, Board Member; Michael Specha, Board Member, via phone

Board Member(s) Absent: Representative Natalie Manley, Board Member; Senator John Mulroe, Board Member

Staff Members Present: Martha Reggi – Associate General Counsel; Munaza Aman – Staff Attorney

Guests: Daniel E. Setters, Accounting Plus Tax Solutions; Richard Lockhart

Topic	Discussion	Action
Roll Call	Jay Stewart, present Geoffrey Harlow, present Mitch Lifson, present Representative Natalie Manley, absent Senator John Mulroe, absent Michael Specha, present	
Introductions	Each Board member, Department staff, and guest introduced themselves.	
Approval of December 15, 2014 Meeting Minutes	Approval of the December 15, 2014 Meeting Minutes was tabled due to lack of quorum.	
Analysis of Future	Chairperson Stewart reviewed the requirements of SB2774	



# Illinois Tax Return Preparation Task Force Report

Action	including that three meetings be held in 2014 and that a final report be issued by December 2015. He reviewed the topics discussed in the last meeting which included an overview of tax return preparation in various jurisdictions. Martha Reggi distributed a draft witnesses and interested persons list for future meetings and the Task Force made additions. Daniel Setters suggested additional potential witnesses and inquired as to the status of whether additional members will join the Task Force. Chairperson Stewart indicated that the meetings are open to the public and experts in any areas of interest are welcome, such as IRS representatives or persons from other states.	
Adjournment		There being no further business to discuss, a motion was made by Stewart / seconded by Harlow to adjourn at 3:32 pm. Motion passed unanimously.

## EXHIBIT 1(D)

Illinois Department of Financial & Professional Regulation, Division of Professional Regulation  
Tax Return Preparation Task Force Minutes

Date: February 10, 2015

Call to Order: 10:06 am – Jay Stewart, Chairperson

Location: IDFPR – Division of Professional Regulation  
100 W Randolph, 9<sup>th</sup> Floor Room 9-171A  
Chicago, IL 60601

Board Members Present: Jay Stewart, Chairperson; Geoffrey Harlow, Member; Andrew Jennison, Member; Representative Natalie Manley, Member; Senator John Mulroe, Member; Michael T. Specha, Member

Board Member(s) Absent: N/A

Staff Members Present: Martha Reggi – Associate General Counsel

Guests: Howard D. Ellison, Wermer Rogers Doran & Ruzon, LLC; Thomas J. Walsh, Thomas J. Walsh Consulting; Ed Karl, Vice President, AICPA Tax Division, via phone; Marty Green, Illinois CPA Society, via phone

Topic	Discussion	Action
Roll Call	Jay Stewart, present Geoffrey Harlow, present Andrew Jennison, present; Representative Natalie Manley, present Senator John Mulroe, present Michael T. Specha, present	
Introductions	Each Task Force member, Department staff, and guest introduced themselves. Martha Reggi reminded the Task Force	

## Illinois Tax Return Preparation Task Force Report

	of Open Meeting Act requirements.	
Approval of December 15, 2014 and December 19, 2014 Meeting Minutes		A motion was made by Mulroe / seconded by Jennison to approve the December 15, 2014 and December 19, 2014 meeting minutes. Motion passed unanimously.
Analysis of Future Action	<p>Chairperson Stewart reviewed the meetings that have taken place to date and reviewed the agenda.</p> <p><u>Guest Ed Karl, Vice President, AICPA Tax Division</u> Mr. Karl thanked the Task Force for inviting him to speak and he discusses encouraging a mobile model of regulation of tax preparers by adopting a preparer tax identification number (PTIN) system. He stated that this would ensure competency and consistency to enforce ethical standards. This would also aid multiple states at once, given that individuals often prepare taxes in multiple states. Mr. Karl discussed leveraging the existing federal PTIN program in order to assist in tracking across jurisdictions. Additionally, this would allow for fines for those who fail to comply with a PTIN requirement. Mr. Karl answered various questions from the Board regarding how PTINs are obtained, whether CPAs would be exempt from such requirements, and any formal positions the AICPA may take on this issue.</p> <p>Mulroe suggested that the Task Force perform an analysis of Attorney General and Department of Revenue complaints regarding tax preparers.</p> <p><u>Guest Tom Walsh, Independent Lobbyist for H&amp;R Block</u> Mr. Walsh discussed the background of the legislation creating the Task Force and indicated that the Attorney General was in support of the creation of the Task Force. Jennison spoke to tax preparer licensure/registration status in California, Oregon, Maryland, New York, Colorado, and New Jersey. The Task Force discussed the primary issues with the scope of problems the Task Force is seeking to prevent, such as fraud, competency, and compliance. Jennison suggested contacting other states to invite their testimony before the Task Force.</p> <p><u>Guest Howard D. Ellison, Wermer Rogers Doran &amp; Ruzon, LLC</u> Mr. Ellison discussed Illinois' understated income issues and indicated this may be a client based issue. Mr. Ellison encouraged analysis of the IRS PTIN system. A PTIN system may allow tracking of issues and may result in fees from fines.</p> <p>Manley suggested that the Task Force make a statement to the public to encourage consumer protection. Harlow suggested that the Task Force also consider empirical analysis of tax return issues.</p>	
Adjournment		There being no further

# Illinois Tax Return Preparation Task Force Report

		business to discuss, a motion was made by Mulroe / seconded by Specha to adjourn at 11:38 am. Motion passed unanimously.
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## EXHIBIT 1(E)

Illinois Department of Financial & Professional Regulation, Division of Professional Regulation  
Tax Return Preparation Task Force Minutes

**Date:** June 25, 2015

**Call to Order:** 11:05 am – Jay Stewart, Chairperson

**Location:** IDFPR – Division of Professional Regulation  
100 W Randolph, 9<sup>th</sup> Floor Room 9-171B&C  
Chicago, IL 60601

**Board Members Present:** Jay Stewart, Chairperson; Stephen W. DeFilippis, Member; Geoffrey Harlow, Member; Andrew Jennison, Member; Representative Natalie Manley, Member; Senator John Mulroe, Member; Michael R. Pieczonka, Member; Michael T. Specha, Member

**Board Member(s) Absent:** N/A

**Staff Members Present:** Martha Reggi, Associate General Counsel; Stephanie Rosienski, Law Clerk

**Guests:** Vijay Raghavan, Office of the Illinois Attorney General, Consumer Fraud Bureau; Matthew Frost, City of Chicago, Business Affairs and Consumer Protection; Paul Harris, Center for Economic Progress; Dylan Bellisle, Center for Economic Progress; Daniel Setter, Independent Accountants Association of Illinois; Via phone: Chi Chi Wu, National Consumer Law Center; Douglas Blackstone, Executive Director, Maryland Board of Individual Tax Preparers

Topic	Discussion	Action
Roll Call	Jay Stewart, present Stephen W. DeFilippis, present Geoffrey Harlow, present Andrew Jennison, present Representative Natalie Manley, present Senator John Mulroe, present Michael R. Pieczonka, present Michael T. Specha, present	
Introductions	Each Task Force member, Department staff, and guest introduced themselves.	
Approval of February 10, 2015 Meeting Minutes		A motion was made by Specha / seconded by Jennison to approve the February 10, 2015 meeting minutes. Motion passed unanimously.

# Illinois Tax Return Preparation Task Force Report

<p>Analysis of Task Force Action</p>	<p>Chairperson Stewart reviewed the meetings that have taken place to date and reviewed the agenda.</p> <p><u>Guest Matthew Frost, City of Chicago, Business Affairs and Consumer Protection</u> Matthew Frost discussed the business license and disclosure requirements for tax preparers in the City of Chicago. He indicated that there are currently 400 tax preparation businesses operating in Chicago, which includes licensed and unlicensed entities. He reviewed the City’s complaint and investigation processes and answered Task Force questions about these processes.</p> <p><u>Guest Vijay Raghavan, Office of the Illinois Attorney General, Consumer Fraud Bureau</u> Vijay Raghavan discussed the Attorney General’s investigations and litigation relating to tax compliance problems. He summarized the Consumer Fraud Act generally and as it relates to anticipation loan reform. Mr. Raghavan reviewed the Mo’Money tax scheme of 2010 to 2011. He also reviewed tax preparer compliance issues and addressed Task Force questions.</p> <p>Pieczonka reviewed his own experience with tax preparer problems and fraud.</p> <p>Paul Harrison from the Center for Economic Progress addressed the issue of identity theft as it relates to tax preparation.</p> <p><u>Guest Chi Chi Wu, National Consumer Law Center</u> Chi Chi Wu discussed the 2008 mystery shopper program that reviewed potential problems in the tax preparation industry. She discussed the National Consumer Law Center’s model act and application across states. She answered inquiries from Task Force members relating to the necessity of regulation in this area.</p>	
<p>Analysis of Future Task Force Action</p>	<p>The Task Force reviewed potential future guests. The Task Force plans to meet in July and August. Stewart reviewed the Task Force’s December 1, 2015 report deadline.</p>	
<p>Adjournment</p>		<p>There being no further business to discuss, a motion was made by DeFilippis / seconded by Pieczonka to adjourn at 12:40 pm. Motion passed unanimously.</p>

## EXHIBIT 1(F)

Illinois Department of Financial & Professional Regulation, Division of Professional Regulation  
Tax Return Preparation Task Force Minutes

Date: July 30, 2015

# Illinois Tax Return Preparation Task Force Report

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Call to Order: 10:05 am – Jay Stewart, Chairperson

Location: IDFPR – Division of Professional Regulation  
100 W Randolph, 9<sup>th</sup> Floor Room 9-171B&C  
Chicago, IL 60601

Board Members Present: Jay Stewart, Chairperson; Stephen W. DeFilippis, Member; Geoffrey Harlow, Member; Andrew Jennison, Member (via phone); Representative Natalie Manley, Member; Senator John Mulroe, Member; Jim Nichelson, Member; Michael T. Specha, Member

Board Member(s) Absent: N/A

Staff Members Present: Martha Reggi, Associate General Counsel; Stephanie Rosienski, Law Clerk; Aaron Curry, Law Clerk

Guests: Daniel Setter, Independent Accountants Association of Illinois; Dick Lockhart, Independent Accountants Association of Illinois

Via phone: Douglas Blackstone, Executive Director, Maryland Board of Individual Tax Preparers; Richard Ernst, Deputy Commissioner of the Office of Professional Responsibility of the New York State Department of Taxation and Finance; Howard Moyes, Executive Director of the Oregon Board of Tax Preparers; Celeste Heritage, Administrator of the California Tax Education Council; Marty Green, Illinois CPA Society

Topic	Discussion	Action
Motion to Allow Member to Attend via phone		A motion was made by Stewart / seconded by Specha to allow Jennison to attend by phone due to personal issues pursuant to 5 ILCS 120/7 of the Open Meetings Act. Motion passed unanimously.
Roll Call	Jay Stewart, present Stephen W. DeFilippis, present Geoffrey Harlow, present Andrew Jennison, present via phone Representative Natalie Manley, present Senator John Mulroe, present Jim Nichelson, present Michael T. Specha, present	
Introductions	Each Task Force member, Department staff, and guest introduced themselves.	
Approval of June 25, 2015 Meeting Minutes		A motion was made by DeFilippis / seconded by Stewart to approve the June 25, 2015 meeting minutes. Motion passed unanimously.

# Illinois Tax Return Preparation Task Force Report

<p>Analysis of Task Force Action</p>	<p>Chairperson Stewart reviewed the meetings that have taken place to date and reviewed the agenda.</p> <p><u>Guest Douglas Blackstone, Executive Director, Maryland Board of Individual Tax Preparers</u> Mr. Blackstone reviewed the regulatory structure of Maryland, including registration for individual tax preparers, the Maryland State Board for Individual Tax Preparer, and FAQs.</p> <p><u>Guest Richard Ernst, Deputy Commissioner of the Office of Professional Responsibility of the New York State Department of Taxation and Finance</u> Mr. Ernst reviewed the standards and conducts and regulatory structure of tax return preparers in New York.</p> <p><u>Guest Howard Moyes, Executive Director of the Oregon Board of Tax Preparers</u> Mr. Moyes reviewed the Oregon Board regulation of tax practitioners and businesses and an overview of complaints received.</p> <p><u>Guest Celeste Heritage, Administrator of the California Tax Education Council</u> Ms. Heritage reviewed CTEC’s regulatory structure and the Tax Preparers Act.</p>	
<p>Old Business</p>	<p>The Task Force reviewed potential future guests. The Task Force plans to meet in August, September, October, and November. Stewart reviewed the Task Force’s December 1, 2015 report deadline.</p> <p>DeFilippis reviewed the Report of the Commissioner’s Advisory Group on Regulation and Registration of Commercial Tax Return Preparers from June 1994.</p> <p>Jennison reviewed a white paper entitled, Tax Return Preparer Standards: An Important Tool to Improve Tax Return Accuracy, Combat, Fraud, and Protect Consumers from the Tax Institute at H&amp;R Block.</p> <p>Travel vouchers were distributed to Task Force Members.</p>	
<p>Adjournment</p>		<p>There being no further business to discuss, a motion was made by Harlow / seconded by DeFilippis to adjourn at 12:01 pm. Motion passed unanimously.</p>

## EXHIBIT 1(G)

Illinois Department of Financial & Professional Regulation, Division of Professional Regulation  
Tax Return Preparation Task Force Minutes

Date: August 20, 2015

Call to Order: 10:34 am – Jay Stewart, Chairperson

# Illinois Tax Return Preparation Task Force Report

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Location: IDFPR – Division of Professional Regulation  
100 W Randolph, 9<sup>th</sup> Floor Room 9-171C  
Chicago, IL 60601

Board Members Present: Jay Stewart, Chairperson; Stephen W. DeFilippis, Member; Geoffrey Harlow, Member; Andrew Jennison, Member; Senator John Mulroe, Member; Jim Nicholson, Member (via phone); Michael T. Specha, Member

Board Member(s) Absent: Representative Natalie Manley, Member

Staff Members Present: Martha Reggi, Associate General Counsel; Stephanie Rosienski, Law Clerk; Steven Monroy, Law Clerk

Guests: Dick Lockhart, Independent Accountants Association of Illinois; Pat McGuinness, Independent Accountants Association of Illinois; Eric Sternberg, Center for Economic Progress; Dylan Bellisle, Center for Economic Progress; Martin Lieberman, Community Currency Exchange Association; Michael Frizel, Community Currency Exchange Association; Stan Hutchinson, Tax Tech Inc.; Via phone: Marty Green, Illinois CPA Society; Robert Kerr, National Association of Enrolled Agents; Carol Campbell, IRS Return Preparer Office; Sue Gaston, IRS Return Preparer Office

Topic	Discussion	Action
Motion to Allow Member to Attend via phone		A motion was made by Stewart / seconded by Specha to allow Nicholson to attend by phone due to employment pursuant to 5 ILCS 120/7 of the Open Meetings Act. Motion passed unanimously.
Roll Call	Jay Stewart, present Stephen W. DeFilippis, present Geoffrey Harlow, present Andrew Jennison, present Representative Natalie Manley, absent Senator John Mulroe, present Jim Nicholson, present via phone Michael T. Specha, present	
Introductions	Each Task Force member, Department staff, and guest introduced themselves.	
Approval of July 30, 2015 Meeting Minutes		A motion was made by DeFilippis / seconded by Harlow to approve the July 30, 2015 meeting minutes. Motion passed unanimously.
Analysis of Task Force Action	Chairperson Stewart reviewed the meetings that have taken place to date and reviewed the agenda.  <u>IRS Return Preparer Office Guests Carol Campbell, Director of RPO Office &amp; Sue Gaston, Director of Continuing</u>	



# Illinois Tax Return Preparation Task Force Report

	<p><u>Education Management</u> Ms. Campbell reviewed IRS Return Preparer Oversight, including the history of the IRS Return Preparer Office, return preparer categories, the enrolled agent credential, annual filing season program, and directory of federal tax return preparers with credentials and select qualifications.</p> <p><u>Guest Eric Sternberg, Center for Economic Progress</u> Mr. Sternberg explained the purpose and role of the Center for Economic Progress and identified various problems the Center’s legal clinic typical sees. He and Dylan Bellisle explained the Center’s relation to the IRS’ VITA program.</p> <p><u>Guest Robert Kerr, National Association of Enrolled Agents</u> Mr. Kerr addressed the issue of return preparer oversight, including fundamental principles for reform, the federal state of addressing the <i>Loving v. IRS</i> opinion, and the IRS’ voluntary registration program.</p> <p><u>Guest Stan Hutchinson, Tax Tech Inc.</u> Mr. Hutchinson addressed common issues that have arisen over his lengthy experience a paid tax preparer across the United States, including earned income tax issues, fraudulent filings, and consumer/client problems.</p> <p><u>Community Currency Exchange Association Guests Martin Lieberman and Michael Frizel</u> Mr. Lieberman explained the role of the CCEA and its relation to the tax preparer industry. He addressed the issues of potential tax preparer regulation.</p>	
Old Business	<p>The Task Force reviewed potential future guests. The Task Force plans to meet in September, October, and November. Stewart reviewed the Task Force’s December 1, 2015 report deadline.</p> <p>Travel vouchers were distributed to Task Force Members.</p>	
Adjournment		<p>There being no further business to discuss, a motion was made by DeFilippis / seconded by Specha to adjourn at 12:05 pm. Motion passed unanimously.</p>

## EXHIBIT 1(H)

Illinois Department of Financial & Professional Regulation, Division of Professional Regulation  
Tax Return Preparation Task Force Minutes

Date: September 23, 2015

Call to Order: 10:04 am – Jay Stewart, Chairperson

Location: IDFPR – Division of Professional Regulation

# Illinois Tax Return Preparation Task Force Report

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100 W Randolph, 9<sup>th</sup> Floor Room 9-171A  
Chicago, IL 60601

Board Members Present: Jay Stewart, Chairperson; Stephen W. DeFilippis, Member; Geoffrey Harlow, Member; Andrew Jennison, Member (via phone); Senator John Mulroe, Member (via phone); Jim Nichelson, Member; Michael T. Specha, Member

Board Member(s) Absent: Representative Natalie Manley, Member

Staff Members Present: Martha Reggi, Associate General Counsel; Aaron Curry, Law Clerk

Guests: Dick Lockhart, Independent Accountants Association of Illinois; Dan Setters, Independent Accountants Association of Illinois; Paul Harrison, Center for Economic Progress; John Ams, National Society of Accountants; Rhonda Kodjayan, Illinois Board of Examiners; Via phone: Marty Green, Illinois CPA Society; James McTigue & Libby Mixon, GAO; Steve Haworth, National Society of Accountants

Topic	Discussion	Action
Motion to Allow Members to Attend via phone		<p>A motion was made by Harlow / seconded by DeFilippis to allow Mulroe to attend by phone due to employment pursuant to 5 ILCS 120/7 of the Open Meetings Act. Motion passed unanimously.</p> <p>A motion was made by Stewart / seconded by Nichelson to allow Mulroe to attend by phone due to employment pursuant to 5 ILCS 120/7 of the Open Meetings Act. Motion passed unanimously.</p>
Roll Call	<p>Jay Stewart, present Stephen W. DeFilippis, present Geoffrey Harlow, present Andrew Jennison, present via phone Representative Natalie Manley, absent Senator John Mulroe, present via phone Jim Nichelson, present Michael T. Specha, present</p>	
Introductions	Each Task Force member, Department staff, and guest introduced themselves.	
Approval of August 20, 2015 Meeting Minutes		A motion was made by DeFilippis / seconded by Harlow to approve the August 20, 2015 meeting minutes. Motion passed unanimously.
Analysis of Task Force Action	<p>Chairperson Stewart reviewed the meetings that have taken place to date and reviewed the agenda.</p> <p><u>Guests James McTigue &amp; Libby Mixon, U.S. Government Accountability Office</u> Mr. McTigue and Ms. Mixon reviewed the U.S.</p>	

# Illinois Tax Return Preparation Task Force Report

	<p>GAO’s undercover studies regarding paid tax preparers, the history of the IRS’ regulation of paid tax preparers, and an analysis of the status of the current legislative climate in this area. Mr. McTigue and Ms. Mixon answered Task Force member inquiries regarding the U.S. GAO’s studies.</p> <p><u>Guests John Ams &amp; Steve Haworth, National Society of Accountants</u> Mr. Ams and Mr. Haworth discussed the National Society of Accountant’s position regarding the regulation of paid tax preparers in Illinois, including an analysis of minimal competency standards, possible examinations, and potential continuing education requirements. Mr. Ams and Mr. Haworth answered inquiries from the Task Force regarding NSA’s position.</p> <p><u>Guest Paul Harrison, Center for Economic Progress</u> Mr. Harrison explained the purpose and role of the Center for Economic Progress and identified various problems for the Center’s clients. Mr. Harrison answered inquiries from the Task Force regarding the Center’s services.</p>	
Old Business	<p>In response to prior Task Force member requests, Task Force member Nichelson reviewed the Illinois Department of Revenue’s complaints regarding paid tax preparers and criminal investigations against paid tax preparers.</p> <p>In response to prior Task Force member requests, the Illinois CPA Society provided its written position paper regarding the scope of the regulation of tax preparers in Illinois. Marty Green briefly summarized the position.</p> <p>The Task Force reviewed remaining future guests. The Task Force plans to meet in October and November. Stewart reviewed the Task Force’s December 1, 2015 report deadline and the process for reviewing the Task Force’s report and recommendation.</p> <p>Travel vouchers were distributed to Task Force members.</p>	
Adjournment		<p>There being no further business to discuss, a motion was made by DeFilippis / seconded by Specha to adjourn at 12:18 pm. Motion passed unanimously.</p>

## EXHIBIT 1(I)

Illinois Department of Financial & Professional Regulation, Division of Professional Regulation  
Tax Return Preparation Task Force Minutes

# Illinois Tax Return Preparation Task Force Report

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Date: October 16, 2015

Call to Order: 10:02 am – Jay Stewart, Chairperson

Location: IDFPF – Division of Professional Regulation  
100 W Randolph, 9<sup>th</sup> Floor Room 9-171A  
Chicago, IL 60601

Board Members Present: Jay Stewart, Chairperson; Stephen W. DeFilippis, Member; Geoffrey Harlow, Member; Andrew Jennison, Member; Representative Natalie Manley, Member; Senator John Mulroe, Member; Jim Nichelson, Member; Michael T. Specha, Member

Board Member(s) Absent: N/A

Staff Members Present: Martha Reggi, Associate General Counsel; Stephanie Rosienski, Law Clerk; Steven Monroy, Law Clerk

Guests: Dan Setters, Independent Accountants Association of Illinois; Via phone: Marty Green, Illinois CPA Society; Irwin Nadel, New Jersey Department of Treasury; Saul Larsen, State of Colorado; Karen Hawkins, formerly of the IRS Office of Professional Responsibility; Jeremy Stohs, Exec. Director of H&R Block’s Public Policy Team

Topic	Discussion	Action
Roll Call	Jay Stewart, present Stephen W. DeFilippis, present Geoffrey Harlow, present Andrew Jennison, present Representative Natalie Manley, present Senator John Mulroe, present Jim Nichelson, present Michael T. Specha, present	
Introductions	Each Task Force member, Department staff, and guest introduced themselves.	
Approval of September 23, 2015 Meeting Minutes		A motion was made by Specha / seconded by DeFilippis to approve the September 23, 2015 meeting minutes. Motion passed unanimously.
New Business	Chairperson Stewart reviewed the meetings that have taken place to date and reviewed the agenda.  <u>Guest Saul Larsen, State of Colorado</u> Mr. Larsen reviewed the Colorado Department of Regulatory Agencies sunset review process and the October 15, 2016 sunrise review of paid tax preparers. Mr. Larsen answered Task Force member inquiries regarding the review.  <u>Guest Karen Hawkins, formerly of the IRS Office of Professional Responsibility</u> Ms. Hawkins reviewed the regulation of paid tax return	

# Illinois Tax Return Preparation Task Force Report

	<p>preparation activities including the IRS’ disciplinary actions and cases. Ms. Hawkins answered Task Force member inquiries regarding this analysis.</p> <p><u>Guest Jeremy Stohs, H&amp;R Block</u> Mr. Stohs presented a written “Statement of H&amp;R Block Regarding State Regulation of Commercial Tax Preparers to the Tax Return Preparation Task Force.” Mr. Stohs answered Task Force member inquiries regarding the statement.</p> <p><u>Guest Irwin Nadel, New Jersey Department of Treasury</u> Mr. Nadel reviewed the New Jersey Department of Revenue’s e-file requirements for paid tax preparers. Mr. Stohs Nadel Task Force member inquiries regarding the requirements.</p>	
Old Business	<p>Task Force members were reminded to complete required ethics training.</p> <p>Travel vouchers were distributed to Task Force members.</p> <p>The Task Force plans to meet November 16, 2015.</p> <p>Stewart reviewed the Task Force’s December 1, 2015 report deadline and the process for reviewing the Task Force’s report and recommendation. The Task Force deliberated the potential recommendation of the report.</p>	<p>A motion was made by Mulroe / seconded by Specha to recommend the following in the Task Force Report:</p> <p>(1) Requiring tax preparers to obtain a PTIN in order to file returns with IDOR;</p> <p>(2) The General Assembly consider giving IDOR enhanced enforcement authority against preparers who file inaccurate or fraudulent returns; and</p> <p>(3) Encourage all stakeholders (state gov’t, CPA Society, etc.) to educate the public the importance of utilizing a competent tax professional.</p> <p>Motion passed with a vote of 6 in favor of the motion, and 2 opposed.</p>
Adjournment		<p>There being no further business to discuss, a motion was made by DeFilippis / seconded by Harlow to adjourn at 12:15 pm. Motion passed unanimously.</p>

## EXHIBIT 1(J)

Illinois Department of Financial & Professional Regulation, Division of Professional Regulation  
Tax Return Preparation Task Force Minutes

Date: November 16, 2015

Call to Order: 10:32 am – Jay Stewart, Chairperson

Location: IDFPR – Division of Professional Regulation  
100 W Randolph, 9<sup>th</sup> Floor Room 9-171A Chicago, IL 60601

# Illinois Tax Return Preparation Task Force Report

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Board Members Present: Jay Stewart, Chairperson; Stephen W. DeFilippis, Member; Geoffrey Harlow, Member; Andrew Jennison, Member (via phone); Jim Nichelson, Member; Michael T. Specha, Member

Board Member(s) Absent: Representative Natalie Manley, Member; Senator John Mulroe, Member

Staff Members Present: Martha Reggi, Associate General Counsel; Stephanie Rosiensi, Law Clerk; Aaron Curry, Law Clerk

Guests: Dan Setters, Independent Accountants Association of Illinois; Matthew Frost, City of Chicago; Via phone: Marty Green, Illinois CPA Society; Sue Gaston, IRS

Topic	Discussion	Action
Motion to Allow Member to Attend via phone		A motion was made by Specha/ seconded by Harlow to allow Jennison to attend by phone due to employment pursuant to 5 ILCS 120/7 of the Open Meetings Act. Motion passed unanimously.
Roll Call	Jay Stewart, present Stephen W. DeFilippis, present Geoffrey Harlow, present Andrew Jennison, present via phone Representative Natalie Manley, absent Senator John Mulroe, absent Jim Nichelson, present Michael T. Specha, present	
Introductions	Each Task Force member, Department staff, and guest introduced themselves.	
Approval of October 16, 2015 Meeting Minutes		A motion was made by DeFilippis / seconded by Harlow to approve the October 16, 2015 meeting minutes. Motion passed unanimously.
Old Business	The Task Force reviewed the Task Force's report, recommendation and dissent. The Task Force discussed the distribution of the report, recommendation and dissent to the Governor, General Assembly, and the public on December 1, 2015.  Travel vouchers were distributed to Task Force members.	A motion was made by Specha / seconded by Harlow to adopt the draft Task Force report, recommendation and dissent as an accurate rendition of the recommendation made at the October 16, 2015 meeting. Motion passed unanimously.
Adjournment		There being no further business to discuss, a motion was made by DeFilippis / seconded by Nichelson to adjourn at 10:42 am. Motion passed unanimously.

# Illinois Tax Return Preparation Task Force Report

## EXHIBIT 2

### Oregon Board of Tax Practitioners: Disciplinary Action Log

Date	City	Violation(s)	Disciplinary Action
May 2015	Medford	<p>Revoke Tax Consultant license, License No. 28195-C pursuant to ORS 673.700(1),(6) &amp; (7) and OAR 800-015-0015(6); misrepresentation of continuing education, or failing to meet the continuing education requirements or documentation; and</p> <p>Three (3) violations of ORS 673.6755(1), ...upon annual renewal of a tax preparer's or tax consultant's license, each person licensed as a tax consultant or tax preparer shall submit evidence satisfactory to the State Board of Tax Practitioners that the person has completed at least 30 hours of instruction or seminar in subjects related to income tax preparation since the preceding license renewal date...</p>	<p>Final Order by Default. Civil Penalty: \$3,000</p> <p>Legal Costs: \$397.50</p>
May 2015	Salem	<p>Seven (7) violations of ORS 673.700(3), negligence or incompetence in tax consultant or tax preparer practice or when acting in the capacity of a tax preparer or tax consultant in another state, or under an exempt status or in preparation of the personal income tax return for another state or the federal government; and</p> <p>Seven (7) violations of ORS 673.700(7) and OAR 800-010-0045, a licensee shall not prepare tax returns or give advice that is outside the field of the licensee's experience and competence without the assistance of a person who is competent in the area of concern</p>	<p>Final Order by Default. Civil Penalty: \$14,000</p> <p>Legal Costs: \$667.80</p>
May 2015	Keizer	<p>Eighty (80) violations of ORS 673.615(1), preparing, advising or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure;</p> <p>Two (2) violation of ORS 673.643(1), for failing to register a tax preparation business; and</p> <p>Two (2) violations of ORS 673.705(6), engaging in dishonesty, fraud or deception relating to the preparation of personal income tax returns</p>	<p>Final Order by Default. Civil Penalty: \$8,300</p> <p>Legal Costs: \$747.30</p>
May 2015	Bend	<p>Three (3) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and</p> <p>One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1), for failing to</p>	<p>Final Order adopting the Administrative Law Judge's ruling in favor of the Board's Motion for Summary Determination. Civil Penalty:\$15,000</p>



## Illinois Tax Return Preparation Task Force Report

		register a tax preparation business.	Legal Costs: \$7,578.30
May 2015	Portland	One (1) violation of ORS 673.643(1), for failing to register a tax preparation business.	Final Order by Default. Civil Penalty: \$100
May 2015	Portland	One (1) violation of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and  One (1) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business.	Settlement Agreement and Stipulated Final Order Civil Penalty: \$2,000
May 2015	Eugene	One (1) violation of ORS 673.655, OAR 800-015-0010(1) and OAR 800-015-0015(6), for failing to complete the required number of continuing education hours by the renewal deadline.	Settlement Agreement and Stipulated Final Order Civil Penalty: \$100
May 2015	Medford	One (1) violation of ORS 673.655, OAR 800-015-0010(1) and OAR 800-015-0015(6), for failing to complete the required number of continuing education hours by the renewal deadline.	Settlement Agreement and Stipulated Final Order Civil Penalty: \$100
May 2015	Dayton	One (1) violation of ORS 673.655, OAR 800-015-0010(1) and OAR 800-015-0015(6), for failing to complete the required number of continuing education hours by the renewal deadline.	Settlement Agreement and Stipulated Final Order Civil Penalty: \$100
May 2015	Portland	Three (3) violations of ORS 673.643(1) and OAR 800-030-0025, for failing to register a tax preparation business.	Settlement Agreement and Stipulated Final Order Civil Penalty: \$3,000  Legal Costs: \$731.97
May 2015	Boardman	Thirty-five (35) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and  One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business.	Settlement Agreement and Stipulated Final Order Civil Penalty: \$3,600
May 2014	Clackamas	Twenty-two (22) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and Two (2) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$5,000
May 2014	Boardman	Thirty-five (35) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and One (1) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$3,600
May 2014	Lincoln City	Eighteen (18) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of

## Illinois Tax Return Preparation Task Force Report

		being licensed or exempt from licensure; and One (1) violation of ORS 673.700(7) & OAR 800-010-0050, for advertising in the form of printed, broadcast or electronic material that makes known professional tax services.	\$2,000
May 2014	Prineville	Twenty-six (26) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; Four (4) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business; and Three (3) violations of ORS 673.700(7) & OAR 800-010-0050, for advertising in the form of printed, broadcast or electronic material that makes known professional tax services.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$3,300
May 2014	Woodburn	Thirty-seven (37) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and Three (3) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$5,000
May 2014	Salem	Four (4) violations of ORS 673.643 and OAR 800-025-0061(1) for failure to comply with Consultant in Residence requirements.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$250.00
May 2014	Gresham	Thirty-one (31) violations of ORS 673.615(2) and OAR 800-025-0050(2), for allowing a licensed tax preparer who has not had at least 240 hours and one (1) year's tax return preparation experience during the previous three (3) year period; prepare, advise, or assist in the preparation of personal income tax returns without the immediate, onsite supervision of more experienced personnel; Four (4) violations of ORS 673.643 and OAR 800-025-0061(1) for failure to comply with Consultant in Residence requirements; and One (1) violation of ORS 673.643 and OAR 800-025-0060(7) for failing to notify of changes to the status of its Resident Consultant(s) within 15 business days of the change.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$4,162.50
May 2014	Newport	Thirty-one (31) violations of ORS 673.615(2) and OAR 800-025-0050(2), for allowing a licensed tax preparer who has not had at least 240 hours and one (1) year's tax return preparation experience during the previous three (3) year period; prepare, advise, or assist in the preparation of personal income tax returns without the immediate, onsite supervision of more experienced personnel; Four (4) violations of ORS 673.643 and OAR 800-025-0061(1) for failure to comply with Consultant in Residence requirements; and One (1) violation of ORS 673.643 and OAR 800-025-0060(7) for failing to notify of changes to the status of its Resident Consultant(s) within 15 business days of the change.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$4,162.50

## Illinois Tax Return Preparation Task Force Report

May 2014	Spray	Eighteen (18) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and Four (4) violations of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$1,250
May 2014	Troutdale	Five-Hundred Fifty Eight (558) violations of ORS 673.615(2), for allowing a licensed tax preparer to prepare, advise, or assist in the preparation of personal income tax returns in Oregon for another for valuable consideration without the proper supervision of a licensed tax consultant or a person described in ORS 673.640(2) or (4); One (1) violation of ORS 673.615, 673.700(1) and OAR 800-025-0061(1) for failure to comply with Consultant in Residence requirements; and One (1) violation of ORS 673.615, 673.700(1) and OAR 800-025-0040(4) for failure to comply with Designated Consultant requirements.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$5,500.
May 2014	Gresham	Ninety-three (93) violations of ORS 673.615(1), for preparing, advising, or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1), for failing to register a tax preparation business; and Three (3) violations of ORS 673.700(7) and OAR 800-010-0050 for advertising in the form of printed, broadcast or electronic material that makes known professional tax services.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$ 2,000.
February 2014	Woodburn	Thirteen (13) violations of ORS 673.643(1)(c) and OAR 800-025-0030(5) ~ Failure to notify the Board within 15 business days of a change of physical address to a branch office.	Final Order Civil Penalty Paid in Full. Civil Penalty in the amount of \$650. Legal costs of: \$0
February 2014	Salem	Twenty-three (23) violations of ORS 673.643(1)(c) and OAR 800-025-0030(5) ~ Failure to notify the Board within 15 business days of a change of physical address to a branch office.	Final Order Civil Penalty Paid in Full. Civil Penalty in the amount of \$1,150. Legal costs of: \$0
January 2014	Salem	Two (2) violations of ORS 673.643 and OAR 800-025-0060(7) for failure to notify the Board within 15 business days of any change in status of its Resident Consultant	Final Order by Default. Civil Penalty in the amount of \$600. Legal costs of: \$0
January 2014	Molalla	10 violations of ORS 673.615(1) ~ preparing, advising or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and Two (2) violations of ORS 673.643(1) & OAR 800-025-0020(1) ~ failing to register a tax preparation business before offering services to the public.	Final Order by Default. Civil Penalty in the amount of \$5,200. Legal costs of: \$0
January 2014	McMinnville	110 violations of ORS 673.615(1) ~ preparing, advising or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; Three (3) violations of ORS 673.643(1) & OAR 800-025-0020(1) ~ failing to	Final Order by Default. Civil Penalty in the amount of \$27,900. Legal costs of: \$0

## Illinois Tax Return Preparation Task Force Report

		register a tax preparation business before offering services to the public; and One (1) ORS 673.700(7) & OAR 800-010-0050, for advertising in the form of printed, broadcast or electronic material that makes known professional tax services.	
January 2014	Salem	Five (5) violations of ORS 673.615(1) ~ preparing, advising or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and Six (6) violations of ORS 673.643(1) & OAR 800-025-0020(1) ~ failing to register a tax preparation business before offering services to the public.	Final Order by Default. Civil Penalty in the amount of \$55,000. Legal costs of: \$0
January 2014	Portland	One (1) violation of ORS 673.643(1) and OAR 800-025-0020(1) for failing to register a tax preparation business; and Four (4) violations of ORS 673.700(7) & OAR 800-010-0050 for advertising in the form of printed, broadcast or electronic material that makes known professional tax services.	Final Order by Default. Civil Penalty in the amount of \$500. Legal costs of: \$0
January 2014	Happy Valley	One (1) violation of the Code of Professional Conduct – ORS 673.700(7) and OAR 800-010-0025(6) for failing to make available or return within a reasonable time to the client, personal papers or source material in the manner furnished to the licensee by the client; and Two (2) violations of ORS 673.705(7) & OAR 800-010-0042 for failing to respond in writing to communications from the Board within 15 business days of the date of the request.	Final Order by Default. Civil Penalty in the amount of \$2,000. Legal costs of: \$0
January 2014	Bend	Two (2) violations of ORS 673.643(1)(c) and OAR 800-025-0030(5) ~ Failure to notify the Board within 15 business days of a change of physical address to a branch office.	Final Order Civil Penalty Paid in Full. Civil Penalty in the amount of \$200. Legal costs of: \$0
January 2014	Portland	Two (2) violations of ORS 673.700(7) and OAR 800-010-0050(6) & (7) for advertising in the form of printed, broadcast or electronic material that makes known professional tax services without including the board issued business registration number of the firm, the license number of the firm’s Designated Licensed Tax Consultant and/or her board issued LTC license number.	Final Order Civil Penalty Paid in Full. Civil Penalty in the amount of \$500. Legal costs of: \$0
January 2014	Bend	Two (2) violations of ORS 673.643(1)(c) and OAR 800-025-0030(5) ~ Failure to notify the Board within 15 business days of a change of physical address to a branch office.	Final Order Civil Penalty Paid in Full. Civil Penalty in the amount of \$200. Legal costs of: \$0
January 2014	Sherwood	Five (5) violations of ORS 673.700(7) and OAR 800-010-0050(6) & (7) for advertising in the form of printed, broadcast or electronic material that makes known professional tax services without including the board issued business registration number of the firm, the license number of the firm’s Designated Licensed Tax Consultant and/or her board issued LTC license number.	Final Order Civil Penalty Paid in Full. Civil Penalty in the amount of \$1,250. Legal costs of: \$0
December 2013	Happy Valley	Respondent’s license shall be revoked pursuant to ORS 675.701(1) and ORS 675.705(1); One (1) violation of ORS 673.655 & OAR 800-015-0015 ~ failing to comply with	Final Order by Default License Revocation Civil Penalty in the amount of \$1,400.

## Illinois Tax Return Preparation Task Force Report

		<p>audit and verification of CE;                      One (1) violation of ORS 673.705(1) ~ obtaining a license by fraudulent means by attesting to having completed 30 hours of CE &amp; failing to provide proof;                      One (1) violation of the Code of Professional Conduct – ORS 673.705(7) and OAR 800-010-0042 ~ failing to respond to the Board’s notification of audit; and                      - Pursuant to ORS 673.730(9), the costs of this action in the sum of \$0, to date are also proposed against Respondent.</p>	Legal costs of: \$0
Oct/Nov 2013	Salem	Respondent’s license shall be suspended pursuant to ORS 25.750 to ORS 25.783 for failure to comply with an agreement entered into with the Child Support Program with respect to his child support obligation.	Order of License Suspension issued – 10/24/13 Final Order Reinstating License was issued – 11/7/13
September 2013	Cove	One (1) violation of ORS 673.705(1) for obtaining or attempting to obtain his initial tax preparer license by fraudulent representation; and One (1) violation of ORS 673.700(7) and OAR 800-010-0042 for failure to respond in writing to communications from the Board within 15 business days.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$250.
March 2013	Tigard	One (1) violation of ORS 673.615(2) and OAR 800-025-0050(2), for allowing a tax preparer who has not had at least 240 hours and one (1) year’s tax return preparation experience during the previous three (3) year period prepare, advise or assist in the preparation of tax returns without the immediate, onsite supervision of more experienced personnel; Three (3) violations of ORS 673.643 and OAR 800-025-0060(7), for failing to notify the board of changes to the status of its Resident Consultant(s) within 15 business days of the change; and Three (3) violations of ORS 673.643 and OAR 800-025-0030(5), for failing to report changes to a branch office within 15 business days of the change.	Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$2,800.
February 2013	Hillsboro	89 violations of ORS 673.615(1) ~ preparing, advising or assisting in the preparation of personal income tax returns for valuable consideration without being licensed or exempt from licensure; and One (1) violation of ORS 673.643(1) & OAR 800-025-0020(1)(a & b) ~ failing to register a tax preparation business before offering services to the public.	Final Order Imposing Civil Penalties and Costs. Civil Penalty in the amount of \$22,350. Board costs of \$9,921.32. TOTAL: \$32,271.32
February 2013	Portland	<p><b><i>Continued Violations:</i></b>                      Revocation of his tax consultant license #5383-C;                      One (1) violation of ORS 673.700(3) and OAR 800-010-0017(1), for evidencing a lack of ability or fitness to perform his professional functions; and                      One (1) violation of ORS 673.700(1) and ORS 673.705(7), for violating a position of trust.</p> <p><b><i>HISTORY</i></b>  <b><i>Initial Violations (3/2011):</i></b>                      Three (3) violations of ORS 673.705(1) ~ obtaining or attempting to obtain his license by fraudulent representation;</p>	<p>Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$4,000.</p> <p>History – 3/2011:                      Settlement Agreement and Stipulated Final Order. Civil Penalty in the amount of \$3,250 &amp; Stipulations:                      1) Must not agree to or act as DC/RC of any tax preparation Business;</p>

# Illinois Tax Return Preparation Task Force Report

		<p>Three (3) violations of ORS 673.705(7) ~ violating a position of trust, including a position of trust outside his professional practice; and                  One (1) violation of the Code of Professional Conduct – ORS 673.700(7) and OAR 800-010-0017(1) ~ engaging in conduct which evidenced a lack of ability or fitness to perform his professional functions.</p>	<p>2) Must immediately cease providing tax services if a termination of DC/RC occurs until a replacement is listed and approved by the Board;                  3) Submit quarterly progress reports to the Board;                  4) Psychologist must supply quarterly behavioral progress reports to the Board; and                  5) Understanding that non-compliance with the stipulations of the Agreement will result in the Board immediately beginning the process to revoke his tax preparer license.</p>
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# EXHIBIT 3

## REPORT OF THE CAG SUBGROUP ON REGULATION AND REGISTRATION OF COMMERCIAL TAX RETURN PREPARERS

### PURPOSE:

To address the issue of whether the Internal Revenue Service should establish a program to regulate and register commercial tax return preparers.

This topic is being raised in response to concerns about the level of competence and integrity among commercial tax return preparers and the apparent increase in tax fraud within the tax return preparer community.

The Ethics Subgroup is introducing this topic today and invites input from the CAG and the Service as this issue is further developed by the Ethics Subgroup for a final recommendation at a future meeting of the CAG.

### PRESENTERS:

	<u>IRS</u>	<u>CAG</u>
Presenters:	Leslie S. Shapiro	Stephen W. DeFilippis, EA M. Leon Berk, EA
Participants:		Harvey L. Coustan, CPA James T. Montgomery, Jr., Esq. Peter G. Neumann, Ph.D. Carlos A. Perez, CPA Donny J. Woods

### DISCUSSION OBJECTIVES:

The Ethics Subgroup will present its report on the topic. Questions and comments will be taken from the CAG and the Service. At the conclusion of the discussion, the Ethics Subgroup will have received input it can utilize in the development of a model program for the regulation of commercial tax return preparers. This model program will then be presented at a subsequent meeting of the CAG.

**JUNE 16 & 17, 1994 COMMISSIONER'S ADVISORY GROUP MEETING**



**REPORT OF THE CAG SUBGROUP ON ETHICS AND INTEGRITY ON THE  
REGULATION AND REGISTRATION OF COMMERCIAL TAX  
RETURN PREPARERS**

**BACKGROUND AND FINDINGS**

In 1989, the Commissioner's Advisory Group studied the matter of regulating and registering commercial tax return preparers. At the time, the reasons for considering this matter included the following:

1. Any person, regardless of training or experience, may prepare income tax returns for a fee.
2. Commercial tax return preparers generally are not required to subscribe to any rules of professional conduct or professional responsibility.
3. The complexities of the tax laws are such that doubts are raised relative to the overall competence of commercial tax return preparers.

All of these concerns are still valid. In addition, the recent hearings on the IRS Refund Fraud Strategy, held by the Subcommittee on Oversight of the House Ways & Means Committee, indicate a strong need to address the competence and integrity of the commercial return preparer community. In fact, close examination of the testimony provided at these hearings reveals support for the regulation and registration concept.

In response to questions posed to them during the hearing, two witnesses who were convicted of preparing false Federal income tax returns made the following comments:

"I am a tax preparer, but I didn't need to apply for any tax preparer..."

"I filled out 1040s and signed as the preparer of the returns. That is all that is necessary in the system."

**JUNE 16 & 17, 1994 COMMISSIONER'S ADVISORY GROUP MEETING**

"The idea would be for tax preparers, if they (IRS) could oversee them better. I am not an enrolled tax preparer with the IRS. I can go ahead and sign someone's return. Anyone in this room could sign another person's tax return as information supplied to them to the best of their knowledge and sign a return as a preparer."

The Subgroup also examined preparer penalty data and found the number of return preparer penalties assessed for fiscal year 1993 numbered 2,392. Interestingly, only 80 of these were assessed against Enrolled Agents, CPAs and Attorneys (practitioners regulated under Circular 230). Thus, it can be concluded that 96.65% (2,312) of all return preparer penalties assessed for fiscal year 1993 were assessed against commercial tax return preparers. The 1989 CAG looked at similar data from fiscal year 1988 which indicated that 90.30% of all return preparer penalties assessed were assessed against commercial return preparers.

Finally, the states of Oregon and California currently have licensing programs in place for tax return preparers. The Ethics Subgroup has solicited input from the administrators of each of these programs to determine the success or failure of these programs. The Oregon State Board of Tax Service Examiners responded to several questions we posed to them. These questions and answers are attached to this report as Appendix A.

### CONCLUSIONS

Having concluded that the regulation and registration of commercial tax return preparers is highly desirable, the Ethics Subgroup is in the process of developing a model program which will be presented at a future meeting of the CAG. The issues which are being considered include:

1. Should there be a minimum age requirement?
2. Should there be an educational prerequisite?

3. Should various levels of licensing be offered? For example, one concept under consideration would allow individuals to choose the level at which they wish to engage in return preparation.
4. How should the continuing professional education requirements be structured?
5. Ideally the program would be self-funded. How can this best be achieved?
6. Who would be exempt from the program?
7. How would electronic filing be integrated into the program?

We invite the CAG and the Service to provide their input into the development of this program and look forward to making a complete recommendation at a subsequent meeting of the CAG.



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APPENDIX A



OFFICE OF THE SECRETARY OF STATE

PHIL KEISLING  
SECRETARY OF STATE

May 4, 1994

STATE BOARD OF TAX SERVICE EXAMINERS

1. HAS LICENSING IMPROVED TAX PREPARATION QUALITY?

It is difficult if not impossible to measure. If you start with a significant education requirement and a comprehensive examination then the beginning level of competency of preparers is much higher. Add an annual continuing education requirement to maintain the competency. We have a 75% pass rate for the entry level examination and 35% pass rate for the advanced examination yet there is no shortage of licensees.

Officials in both the Oregon Dept. of Revenue and IRS, Oregon District, have said Oregon tax preparation quality is very good. They also report that licensee cooperation is high due to the fact that they are accountable to a state licensing authority.

2. HAS LICENSING REDUCED PREPARER FRAUD?

Licensees strongly support regulation and take pride in their profession. As a result they watch each other diligently and report improprieties. Since licensees can be easily found, fraud is generally low. Dishonesty results in license suspensions, revocations, and/or fines.

3. HAS THE ADMINISTRATIVE COST BEEN WORTH THE EFFORT?

Administrative costs are 100% funded by the licensing and examination fees. No general fund revenues are needed. The estimated cost to the client is 70¢ +/- per return prepared. Volunteer help is always available.

4. WHAT HAS BEEN YOUR EXPERIENCE WITH ENFORCEMENT?

It is far easier, faster, and less expensive to put someone out of business than to put them in jail. Civil penalties make it all work. Minor offenses are dealt effectively through assessment of penalties. Licensees are responsive to them and dislike the adverse publicity, perhaps, more than the monetary cost. Few are repeat offenders.

Oregon's tax preparer licensing program is for the protection of the taxpayer against the dishonest, incompetent, or negligent practitioner. It does not represent the government's interest in tax law compliance.

Approximately 1% of the practitioners cause most of the problems.

In many cases, non-licensees respond well to warning letters. Penalties of up to \$1,000 per return can be imposed for unlicensed preparation. There are always a few who are not responsive to the penalties and in those cases, court injunctions may be imposed.

5. IF YOU HAD TO DO IT OVER WOULD YOU?

Yes. Licensing promotes professionalism and provides the public with an agency to receive and resolve, (in most cases) their complaints. It must relieve state and federal government taxing departments of problems they dont want and can not resolve.

6. WHAT HAVE BEEN THE NEGATIVES (IF ANY) IN THE PROGRAM?

There is a tendency to over-regulate.

Volunteer assistance may be intrusive at the beginning, but it is easily controlled by being selective.

It causes licensees to take about a week of tax classes every year.

It is more difficult for someone to enter the business of tax preparation. That difficulty is more prevalent in rural areas and small communities but then that is the character of those areas in most endeavors.

In the beginning there is a shortage of education classes available to meet the basic and continuing education requirements but private and public schools quickly develop programs.



**REPORT ON REGULATION AND REGISTRATION  
OF COMMERCIAL TAX RETURN PREPARERS**

**Purpose:**

To identify, regulate and improve the expertise and professionalism of all individuals engaged in the preparation of Federal tax returns for fees. Attorneys and certified public accountants currently licensed and regulated by their states or state societies and enrolled agents would be exempt from this proposal.

The registration, continuing education requirements, testing, and other actions herein proposed are intended to increase the knowledge, awareness, and personal responsibility of all individuals engaged in Federal tax return preparation.

The Ethics and Integrity subgroup is advancing this proposal with the belief that the CAG as a whole will agree and support its objectives and its implementation. It may be that specific legislation is needed before this proposal is implemented.

**Presenters:**

**IRS**

Leslie S. Shapiro

**CAG**

M. Leon Berk, EA  
Stephen W. DePhillips, EA  
DeFilippis

**Participants**

Robert Buggs

Harvey L. Coustan, CPA  
James Montgomery, Jr., Esq  
Peter G. Neumann, Ph.D.  
Carlos A. Perez, CPA  
Donny J. Woods, EA

**Objectives:**

To present for CAG approval a recommendation to the Internal Revenue Service for an action intended to accomplish the purpose outlined above.

September 13, 1994 Commissioner's Advisory Group Meeting



## DESCRIPTION

Circular 230 would be amended to prescribe rules for the regulation of "Commercial Tax Return Preparers."

1. The term "Commercial Tax Return Preparer" (CTRP) would be defined.
2. There would be two levels of CTRPs:
  - a. Registered - anyone who met the definition of a CTRP would be required to register. Preparers presently covered under Circular 230 would be exempted (CPAs, attorneys, and enrolled agents). This level of CTRP could prepare only certain returns (specified by the regulation - and "not too complex").
  - b. Advanced CTRP - these individuals would be authorized to prepare any tax return. Preparers presently covered under Circular 230 would be exempted (CPAs, attorneys, and enrolled agents).

The scope of practice for each level will be the subject of the report at the next CAG meeting.

3. Criteria for CTRPs:
  - a. Minimum age (recommended 18).
  - b. Continuing educational requirements.
    - (1) 16 hours CPE per year for all registered CTRPS.
    - (2) 24 hours CPE per year for all advanced CTRPs.
    - (3) Courses that meet CPE requirements to be approved by the Internal Revenue Service.
4. Testing - an advanced CTRP would be required to take a test administered by the IRS.

September 13, 1994 Commissioner's Advisory Group Meeting

5. Ethical standards would track present Circular 230, where applicable.
6. Sanctions - monetary penalties (if authorized) and/or prohibition from tax return preparation.
7. Fees would be paid for registration and testing to make the program self-funding.
8. Phase-in (grandfathering) would be provided.
9. Administration to be handled by the Internal Revenue Service Office of Director of Practice with strong support and referrals from the District Directors' Offices.

#### **PHASE-IN**

All individuals currently engaged in preparing federal tax returns for a fee would have one year to register with the Director of Practice. Persons failing to register within that period would be prohibited from continuing to prepare returns. Violators would be required to pay a fine and register if they wish to continue as CTRPs. (If the proposal can be implemented without legislation, sanctions other than fines which would require legislation would be substituted.) Subsequent to the phase-in, individuals could pass a test to achieve the higher level of CTRP, but if they did not take the test, but met all of the other requirements, they would be "registered" CTRP.

Those individuals who register within the first twelve months after the beginning of the program and provide proof of 24 hours of CPE per year during the next 36 months will be admitted as Advanced CTRPs. Those individuals who provide proof of 16 hours of CPE per year during the next 36 months will be admitted as CTRPs.

**September 13, 1994 Commissioner's Advisory Group Meeting**

Non-registered individuals could be employed by CTRPs, CPAs, lawyers or enrolled agents (qualified practitioners) and prepare tax returns provided that a qualified practitioner reviewed, signed, and was responsible for the accuracy and positions taken on the return.

**EXAMINATIONS**

The examination for the advanced CTRP would consist of questions of tax law application, ethics, record keeping, penalties and practitioner responsibilities.

**NOTES**

Wherever possible, registration and testing would be conducted for non-English speaking individuals and a special phase-in period would be created for such individuals.

**September 13, 1994 Commissioner's Advisory Group Meeting**



**REGULATION AND REGISTRATION OF COMMERCIAL TAX RETURN PREPARERS**

**Executive Summary**

**CAG SUBGROUP CHAIR:** Harvy L. Coustan, CPA  
M. Leon Berk, EA

**IRS EXECUTIVE:** Leslie S. Shapiro

**BACKGROUND:** To propose a model program to identify, regulate and improve the expertise and professionalism of all individuals engaged in the preparation of federal tax returns for a fee. Practitioners currently regulated under Treasury Department Circular 230 (Enrolled Agents, attorneys and CPAs) would be exempt from this proposal.

**CONTENT:** This proposal has evolved after numerous meetings and extensive discussion and study. We recognize that the individuals covered by this proposal provide a vital service to the public. As a result, this program is not intended to limit or reduce the number of available tax return preparers. We have eliminated the second level of Commercial Tax Return Preparer (CTRP) which appeared in our proposal presented at an earlier CAG meeting. It became obvious that the second tier of Advanced CTRP posed many problems including setting limits and/or assigning different responsibilities to each level. We reached a unanimous conclusion that eliminating the Advanced CTRP would enable the program to achieve its goals, simplify its administration and minimize the disturbance to the present system.

**REQUEST OF CAG or RECOMMENDATIONS:**

Circular 230 would be amended to prescribe rules for the registration of "Commercial Tax Return Preparers."

**NOTE:** See more detailed discussion paper attached.

January 18, 1995 COMMISSIONER'S ADVISORY GROUP  
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## REGULATION AND REGISTRATION OF COMMERCIAL TAX RETURN PREPARERS

In 1989, the Commissioner's Advisory Group studied the matter of regulating and registering commercial tax return preparers. At the time, the reasons for considering this matter included the following:

1. Any person, regardless of training or experience, may prepare income tax returns for a fee.
2. Commercial tax return preparers generally are not required to subscribe to any rules of professional conduct or professional responsibility.
3. The complexities of the tax laws are such that doubts are raised relative to the overall competence of commercial tax return preparers.

All of these concerns are still valid. In addition, the February 1994 hearings on the IRS Refund Fraud Strategy, held by the Subcommittee on Oversight of the House Ways and Means Committee, indicate a strong need to address the competence and integrity of the commercial tax return preparer community. In fact, close examination of the testimony provided at these hearings reveals support for the regulation and registration concept.

In response to questions posed to them during the hearing, two witnesses who were convicted of preparing false Federal income tax returns made the following comments:

"I am a tax preparer, but I didn't need to apply for any tax preparer (sic)..."

"I filled out 1040s and signed as the preparer of the returns. That is all that is necessary in the system."

"The idea would be for tax preparers, if they (IRS) could oversee them better. I am not an enrolled tax preparer (sic) with the IRS. I can go ahead and sign someone's return. Anyone in this room could sign another person's tax return as information supplied to them to the best of their knowledge and sign a return as a preparer."

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## REGULATION AND REGISTRATION OF COMMERCIAL TAX RETURN PREPARERS

The Subgroup also examined preparer penalty data and found the number of return preparer penalties assessed for fiscal year 1993 numbered 2,392. Interestingly, only 80 of these were assessed against Enrolled Agents, attorneys and CPAs (practitioners regulated under Circular 230). Thus, it can be inferred that 96.65% (2,312) of all return preparer penalties assessed for fiscal year 1993 were assessed against commercial tax return preparers. The 1989 CAG looked at similar data from fiscal year 1988 which indicated that 90.30% of all return preparer penalties assessed were assessed against commercial tax return preparers.

The Subgroup likewise took into consideration the recently released General Accounting Office (GAO) report which analyzed the compliance rates of sole proprietors. This report included a break-down of voluntary compliance, reported as a percentage, by type of preparer and was extracted from the 1988 Taxpayer Compliance Measurement Program (TCMP) data. The voluntary compliance percentage for the "other paid preparers" and "National Tax Service" categories, which include commercial tax return preparers, was among the lowest.

Finally, the states of Oregon and California currently have licensing programs in place for tax return preparers. The Ethics in Business Practices Subgroup has solicited input from the administrators of each of these programs to determine their success or failure. The Oregon State Board of Tax Service Examiners responded to several questions we posed to them. These questions and answers are attached to this report as Appendix A. In light of the current concern regarding refund fraud, the statement included in answer #2 "Since licensees can be easily found, fraud is generally low." is particularly interesting.

Having concluded that the regulation and registration of commercial tax return preparers is highly desirable, the Ethics in Business Practices Subgroup presents the following model program to regulate and register commercial tax return preparers.

## REGULATION AND REGISTRATION OF COMMERCIAL TAX RETURN PREPARERS

### DESCRIPTION:

Circular 230 would be amended to prescribe rules for the registration of "Commercial Tax Return Preparers".

1. "Commercial Tax Return Preparer" (CTRP) defined:

The current definition of income tax return preparer found in Internal Revenue Code section 7701(a)(36)(A) would apply. Practitioners currently covered under Circular 230 (Enrolled Agents, attorneys and CPAs) would be exempt.

2. Registration and phase-in period:

After the approval and implementation of this proposal, anyone meeting the definition of CTRP would have one year to register with the Internal Revenue Service without providing proof of continuing professional education (CPE). This one year period would constitute the phase-in period. The group of CTRPs, who would be grandfathered into the program, would be obligated to meet all the requirements of registration renewal as set forth below.

3. Post phase-in period:

Persons desiring to register for the first time after the first year of the program would be required to meet the criteria listed below and submit proof of satisfying a minimum of 24 hours of CPE during the 18 months immediately preceding the receipt of the application for registration. Such proof, the completed registration form and required fee would be submitted to the Internal Revenue Service for acceptance.

4. Criteria for CTRPs:

A. Be not less than eighteen (18) years of age;

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## REGULATION AND REGISTRATION OF COMMERCIAL TAX RETURN PREPARERS

- B. Continuing professional education requirements must be adhered to as follows:
1. A minimum of 48 hours of approved CPE over a three year period with a minimum of 8 hours of CPE in any one year.
  2. Qualifying CPE will be that which meets the definition of "Continuing Professional Education" as found in Treasury Department Circular 230, section 10.6(f).;
  3. Evidence of continuing professional education and a renewal application would have to be submitted every three years commencing with the third anniversary of the initial registration.
- C. The information submitted on each application for the registration would be subject to IRS verification and investigated in a manner consistent with that of applications for enrollment to practice before the IRS;
- D. CTRPs would be subject to the standards set forth in Circular 230;
- E. Violations of ethical standards would result in the assessment of monetary penalties as authorized and/or prohibition from further tax return preparation;
- F. Limited fees would be paid for registration to make the program self-funding. A study is requested to ascertain the minimum fee requirement;
- G. Opportunities for non-English speaking preparers will be made available to accommodate registration and continuing professional education.
- H. The program would be administered by the IRS Office of Director of Practice with strong support and referrals from the District Directors' offices.

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## REGULATION AND REGISTRATION OF COMMERCIAL TAX RETURN PREPARERS

### SUMMARY:

This proposal has evolved after numerous meetings and extensive discussion and study. We recognize that the individuals covered by this proposal provide a vital service to the public. As a result, this program is not intended to limit or reduce the number of available tax return preparers. We have eliminated the second level of CTRP which appeared in our proposal presented at an earlier CAG meeting. It became obvious that the second tier of Advanced CTRP posed many problems including setting limits and/or assigning different responsibilities to each level. We reached a unanimous conclusion that eliminating the Advanced CTRP would enable the program to achieve its goals, simplify its administration and minimize the disturbance to the present system.

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## APPENDIX A

May 4, 1994

### STATE BOARD OF TAX SERVICE EXAMINERS

#### 1. HAS LICENSING IMPROVED TAX PREPARATION QUALITY?

It is difficult if not impossible to measure. If you start with a significant education requirement and a comprehensive examination then the beginning level of competency of preparers is much higher. Add an annual continuing education requirement to maintain the competency. We have a 75% pass rate for the entry level examination and 35% pass rate for the advanced examination yet there is no shortage of licensees.

Officials in both the Oregon Dept. of Revenue and IRS, Oregon District, have said Oregon tax preparation quality is very good. They also report that licensee cooperation is high due to the fact that they are accountable to a state licensing authority.

#### 2. HAS LICENSING REDUCED PREPARER FRAUD?

Licensees strongly support regulation and take pride in their profession. As a result they watch each other diligently and report improprieties. Since licensees can be easily found, fraud is generally low. Dishonesty results in license suspensions, revocations, and/or fines.



3. HAS THE ADMINISTRATIVE COST BEEN WORTH THE EFFORT?

Administrative costs are 100% funded by the licensing and examination fees. No general fund revenues are needed. The estimated cost to the client is 70 cents +/- per return prepared. Volunteer help is always available.

4. WHAT HAS BEEN YOUR EXPERIENCE WITH ENFORCEMENT?

It is far easier, faster, and less expensive to put someone out of business than to put them in jail. Civil penalties make it all work. Minor offenses are dealt effectively through assessment of penalties. Licensees are responsive to them and dislike the adverse publicity, perhaps, more than the monetary cost. Few are repeat offenders.

Oregon's tax preparer licensing program is for the protection of the taxpayer against the dishonest, incompetent, or negligent practitioner. It does not represent the government's interest in tax law compliance.

Approximately 1% of the practitioners cause most of the problems.

In many cases, non-licensees respond well to warning letters. Penalties of up to \$1,000 per return can be imposed for unlicensed preparation. There are always a few who are not responsive to the penalties and in those cases, court injunctions may be imposed.

5. IF YOU HAD TO DO IT OVER WOULD YOU?

Yes. Licensing promotes professionalism and provides the public with an agency to receive and resolve, (in most cases) their complaints. It must relieve state and federal government taxing departments of problems they don't want and can not resolve.

6. WHAT HAVE BEEN THE NEGATIVES (IF ANY) IN THE PROGRAM?

There is a tendency to over-regulate.

Volunteer assistance may be intrusive at the beginning, but it is easily controlled by being selective.

It causes licensees to take about a week of tax classes every year.

It is more difficult for someone to enter the business of tax preparation. That difficulty is more prevalent in rural areas and small communities but then that is the character of those areas in most endeavors.

In the beginning there is a shortage of education classes available to meet the basic and continuing education requirements but private and public schools quickly develop programs.

## EXHIBIT 4



### The NSA Tax Practitioners Bill of Rights

- 1. THE RIGHT TO HAVE TAX LAWS AND RULES PASSED IN A TIMELY MANNER, INCLUDING:**
  - a. The right to have tax laws affecting the current tax year enacted no later than September 1 of that year.
  - b. The right to have IRS forms reflecting any new tax laws for the current year available no later than October 1 of that year.
  
- 2. THE RIGHT TO QUALITY SERVICE FROM THE IRS, INCLUDING:**
  - a. The right to have telephone calls answered within 15 minutes, on a practitioner-only hotline, staffed by competent/knowledgeable employees.
  - b. The right to have taxpayer correspondence answered within 20 days.
  - c. The right to have any collection action on the taxpayer's account frozen while the IRS is considering a taxpayer's timely filed response to IRS collection activity.
  - d. The right to have one IRS representative deal with a tax issue from start to finish until the issue is resolved.
  - e. The right to request a supervisor be involved in resolving a matter if the initiating IRS representative is unwilling or unable to resolve an issue.
  - f. The right for practitioners with Practitioner Tax Identification Numbers (PTINs) to communicate electronically with the IRS on taxpayer matters in a secure manner.
  
- 3. THE RIGHT TO PRACTICE WITHOUT UNDUE IRS DEMANDS DURING TAX FILING SEASON, INCLUDING:**
  - a. The right to have an IRS audit moratorium during the three weeks immediately before major tax deadlines such as March 15, April 15, September 15, October 15 of each year.
  - b. The right to have an IRS moratorium on collection actions or collection information requests during the three weeks immediately before major tax deadlines such as March 15, April 15, September 15, October 15 of each year.
  - c. The right to have an IRS moratorium on planned software maintenance and computer downtime periods during the three weeks immediately before major tax deadlines such as March 15, April 15, September 15, October 15 of each year.

**Sign the Petition!**

<http://www.ipetitions.com/petition/nsa-bill>



National Society of Accountants  
800-966-6679; [www.nsacct.org](http://www.nsacct.org); [members@nsa](mailto:members@nsa)





# EXHIBIT 5

## Tax Preparer Oversight Act

### A BILL

To amend the \_\_\_\_\_ Code to provide taxpayer protection and assistance, and for other purposes.

#### SECTION 1: SHORT TITLE

- (a) Short Title-This Act may be cited as the “Tax Preparer Oversight Act of 20\_\_.”
- (b) Amendment \_\_\_\_\_ Code- Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the \_\_\_\_\_.

#### SECTION 2: DEFINITIONS FOR THE PURPOSES OF THIS ARTICLE:

- (a) The term “Board” means the Tax Preparer Oversight Board.
- (b) The term “client” shall mean an individual or entity for which a tax preparer performs or agrees to perform tax return preparation.
- (c) The term “enrolled agent” shall refer to an individual enrolled to practice before the Internal Revenue Service as described in Title 31 of the Federal regulations, Subtitle A, Part 10.
- (d) The term “person” shall mean an individual, a firm, a partnership, an association, a corporation, or another entity.
- (e) The terms “tax preparer”, “tax refund preparer,” “return preparer,” or “tax return preparer” shall mean:
  - (1) An individual who, for a fee or for other consideration, assists with or prepares five or more tax returns for a client or clients in any one year or who assumes final responsibility for completed work on such returns on which preliminary work has been done by other persons, or who holds himself or herself out as offering those services. An individual engaged in that activity shall be deemed to be a separate individual for the purposes of this article, irrespective of affiliation with, or employment by, another tax preparer; and
  - (2) A corporation, partnership, association, or other entity that has associated with it individuals not exempted under subsection (b) of this section, which individuals shall have as part of their responsibilities the preparation of data and ultimate signatory authority on tax returns, and who assist with or prepare five or more tax returns for a fee or other consideration in any one year, or that holds itself out as offering those services or having that authority.
  - (3) Notwithstanding the foregoing, the term “tax preparer” does not include:
    - (i) Any individual with an active license or permit by the Accountancy Board and authorized to practice public accountancy in this state or by the Board of Public Accountancy in another state and his or her staff support personnel while functioning within the scope of their employment. Employees who sign tax returns who are not registered or licensed by an Accountancy Board are not exempt from the registration requirement.
    - (ii) Any individual currently admitted to practice law in this state or another state where the individual renders service within the course and scope of his or her

practice as an attorney at law and his or her staff support personnel while functioning within the scope of their employment. Employees signing tax returns who are not admitted to practice law in a state are not exempt from the registration requirement.

- (iii) Any fiduciary or the regular employees thereof acting on behalf of the fiduciary estate, the testator, trustor, grantor, or beneficiaries thereof.
  - (iv) An individual who, as part of the regular duties of his or her employment, prepares his or her employers income, franchise or excise tax returns.
  - (v) An individual employed by a local, state, or federal governmental agency, but only in performance of official duties.
- (f) The term "tax return" shall mean a return, declaration, statement, refund, claim, or other document required to be made or filed in connection with local, state or federal income taxes.

### **SECTION 3: REGULATION OF INCOME TAX RETURN PREPARERS**

#### **(a) Registration of tax preparers.**

- (1) Except as otherwise provided in this section or as otherwise permitted by law, no individual shall hold himself or herself out as a tax return preparer unless such individual has applied for and received a registration from the Board pursuant to this section.
- (2) To qualify for registration as a tax preparer, an applicant shall fulfill the following requirements:
  - (i) Application: have filed the appropriate application with the Board;
  - (ii) Education: have satisfied the education requirements set forth in subdivision three of this section;
  - (iii) Age: be at least eighteen years of age;
  - (iv) Character: be of good moral character as determined by the Board;
  - (v) Code of ethics: agree in writing to comply with the code of ethics adopted by the Board; and
  - (vi) Fee: pay a fee to be determined by the Board for application and registration.
  - (vii) Examination: shall have passed any of the written examinations approved by the Internal Revenue Service, a state board of accountancy, a state board of tax practitioners, or a state bar licensing agency.
- (3) An initial registration and each renewal of such registration shall be valid for a period of two years. An applicant for renewal of registration shall meet the requirements of subdivision two of this section; provided, however, that the continuing education requirements for renewal shall be equivalent to the continuing education requirements established by the U. S. Treasury pursuant to the regulatory power established by Title 31 of the U. S. Code.
- (4) A corporation, partnership, association or other entity as defined in Section 2 shall submit an application for registration as provided in the regulations of the Board. Such regulations shall at a minimum require the application to contain such information as the Board deems necessary to identify the entity and its principals, and to be accompanied by the document subscribed by the principals agreeing to comply with the code of ethics, pursuant to subsection (a)(2)(v) of this section, and the fee established pursuant to subsection (a)(2)(vi) of this section.
- (5) An individual who is accredited by and current with the Accreditation Council for

Accountancy and Taxation, Inc., as an Accredited Business Accountant (Advisor), or Accredited Tax Advisor, Or Accredited Tax Preparer shall only be exempt from the examination portion of registration.

- (6) An individual who is enrolled to practice before the Internal Revenue Service as an Enrolled Agent and current with enrollment requirements shall only be exempt from the examination portion of registration.

#### **SECTION 4: RESPONSIBILITIES OF TAX PREPARERS; VIOLATIONS; CIVIL AND CRIMINAL PENALTIES**

- (a) Every tax preparer shall have the affirmative responsibility to act in the best interests of his or her clients and in accordance with the code of ethics promulgated by the Board pursuant to this Act.
- (b) Each tax preparer shall display the evidence of licensing issued to the preparer in accordance with rules adopted by the Board.
- (c) It shall be a violation of this article for a tax preparer to:
  - (1) Fail to register as a tax preparer with the Board;
  - (2) Act as a tax preparer when license is inactive, revoked, or lapsed;
  - (3) Make, or authorize the making of, any statement or representation, oral or written or recorded by any means, which is intended to induce persons to use the tax preparation service of the tax preparer, which statement or representation is fraudulent, untrue, or misleading;
  - (4) Obtain the signature of a client on an income tax return or authorizing document which has not been fully completed in accordance with official instructions;
  - (5) Fail to sign a client's income tax return;
  - (6) Fail to provide the client with a copy of the income tax return;
  - (7) Knowingly give false or misleading information to the Board or the client; or
  - (8) Violate any provision of this Act, or applicable standards of professional conduct established by the U. S. Treasury Department pursuant to the regulatory power established by Title 31 of the U. S. Code.
- (d) A tax return preparer or the firm that employs a tax preparer shall maintain for three years records of personal tax returns prepared by the tax preparer as required by the Internal Revenue Code.
- (e) The Board may seek temporary or permanent injunctions, revoke or suspend the registration, and assess cost, of any tax preparer who is determined to have failed to comply with any of the provisions of this Act or any regulation adopted pursuant to this Act, or to have knowingly aided and abetted another person in violating any of the provisions of this Act or any regulation adopted pursuant to this Act. In addition to such revocation or suspension, the Board may assess a civil penalty not to exceed ten thousand dollars and costs for any such violation.
- (f) Any violation of any provision of this Act shall be a misdemeanor, and upon conviction the court may order as part of the sentence imposed restitution or reparation to the victim of the crime.

#### **SECTION 5: TAX PREPARER OVERSIGHT BOARD; TERM; QUALIFICATION**

There is created a State Tax Preparer Oversight Board. The board shall consist of five (5)

members, four (4) of whom shall be individuals who have been tax preparers as defined in Section 2 of the Tax Preparer Oversight Act for not less than five (5) years prior to appointment and one (1) public member who is not a tax preparer as defined in Section 2 of this Act. The five members shall be appointed by the Governor and approved by the Senate.

(a) Terms

(1) For initial appointments:

- (i) One member to serve a term of one year,
- (ii) One member to serve a term of two years,
- (iii) One member to serve a term of three years,
- (iv) One member to serve a term of four years,
- (v) The public member to serve a term coterminous with the Governor.

(2) Thereafter, except for the public member, each member shall be appointed to serve terms of four (4) years and no member may serve more than two (2) terms.

(3) Members serve at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor, approved by the Senate, or reappoint the incumbent member if the member is eligible for reappointment.

(4) Any vacancy in the Board shall be filled by the Governor to serve the unexpired term of the predecessor in the manner provided by regular appointments.

(b) Members shall serve without compensation, but shall be reimbursed for expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

(c) The Board shall establish rules of procedure which shall include, but not be limited to, the following guidelines:

- (1) Election of a chair and such other officers as deemed necessary annually;
- (2) A quorum of not less than three members shall be required to conduct business;
- (3) The Board shall meet not less than four (4) times annually; and
- (4) Compliance with the Administrative Procedures Act, the \_\_\_\_\_ Open Meeting Act, and such other statutory provisions applicable to Boards, commissions, and committees.

(d) Members of the Board may not be held personally liable for actions taken under this act while acting in good faith with reasonable grounds.

## **SECTION 6: POWERS OF THE BOARD; RULES**

The Tax Preparer Oversight Board is authorized to promulgate regulations to implement the provisions of this Act. Such regulations shall include the adoption of a code of ethics for tax preparers, and such other matters as are required by this Act or are deemed necessary by the Board. Nothing in this Act shall be construed to impair or limit the validity of any additional local laws or regulations, not inconsistent with the provisions of this Act if applicable to tax preparers. The Tax Preparer Oversight Board shall have the following powers:

(a) To develop and administer forms for use in implementing the provisions of the Tax Preparer Oversight Act including, but not limited to, forms for initial registration and renewal registration.

(b) To determine qualifications of applicants for licensing as a tax preparer in this state; to cause examinations to be prepared, conducted and graded; and to issue licenses to qualified applicants upon their compliance with rules of the board.

(c) To adopt rules for the reinstatement of an individual who fails to renew a registration for any reason if the individual otherwise is entitled to be registered.

(d) To promulgate rules of professional conduct for tax preparers.

(e) To promulgate other rules as necessary for the implementation of the provisions of the Tax Preparer Oversight Act.

(f) The Board may employ the necessary personnel for performance of its function and shall determine their compensation.

(g) The Board, or a hearing officer designated by the Board, may administer oaths, hold hearings, and take testimony about matters within the jurisdiction of the Board.

(h) The Board or its designee may issue a subpoena for the attendance of witnesses to testify or the production of evidence in connection with a disciplinary action brought under this act or a proceeding brought for an alleged violation of this act.

(i) If an individual fails to comply with a subpoena issued under this section, on petition of the Board, a court of competent jurisdiction may compel compliance with the subpoena.

(j) The Board, on the affirmative vote of a majority of its member's then serving, may deny a registration to any applicant, reprimand any registered individual, or suspend or revoke a registration if the applicant or registered individual:

- (1) Fraudulently or deceptively obtains or attempts to obtain a registration for the applicant or registration or for another.
- (2) Fraudulently or deceptively uses a registration.
- (3) Under the laws of the United States or any state, is convicted of a felony or a misdemeanor directly related to the fitness and qualification of the applicant or registered individual to provide individual tax preparation services,
- (4) Is guilty of negligence, incompetence, or misconduct while providing individual tax preparation services.
- (5) Violates any provision of this Act.

(k) The Board may promulgate regulations to establish penalties if there is an understatement of liability on a return that would cause a tax return preparer to be subject to the penalties imposed by 26 U.S.C. §6694, §6700, or §6701. If any of the failures enumerated in 26 U.S.C. §6695 occur the Board may establish penalties in addition to any other penalties assessed by the Internal Revenue Service and the Department of Revenue.

(l) A civil action in the name of the State of (Insert state name) may be commenced at the request of the Board to enjoin any individual who is a tax return preparer, or an employer having knowledge of an employee tax return preparer, who is doing business in this state and engaging in conduct described in this subsection, from further engaging in preparing tax returns.

- (1) This action may be brought by the Board in the circuit court for the judicial circuit of the tax return preparer's residence or principal place of business, or in which the taxpayer with respect to whose tax return the action is brought resides.
- (2) The court may exercise its jurisdiction over the action separate and apart from any other action brought by the State of (insert state name) against the tax return preparer or any taxpayer.
- (3) In an action under this subsection, the court may issue an injunction prohibiting an

individual from acting as a tax return preparer if the court finds that the individual has:

- (i) Engaged in any pattern of conduct subject to a civil penalty under Section 6(k).
- (ii) Willfully misreported the preparer's eligibility to practice before the department, or otherwise willfully misreported the preparer's experience or education as a tax return preparer.
- (iii) Knowingly guaranteed the payment of any tax refund or the allowance of any tax credit.
- (iv) Aided or assisted in, counseled, or advised the preparation or presentation under, or in connection with any matter arising under, the state revenue laws, or any returns, affidavits, claims, or other documents, which may constitute a significant congruous pattern of any of the following:
  - a. Knowingly omitting the reporting of income.
  - b. Knowingly claiming excessive or nonexistent deductions.
  - c. Knowingly claiming nonexistent dependents.
  - d. Knowingly claiming fictitious business schedules.
  - e. Knowingly claiming or creating nonexistent losses.
  - f. Using for tax return purposes any documents that that the tax return preparer knows or should know are fraudulent or false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the individual authorized or required to present the return, affidavit, claim, or document.

(m) For purposes of this section, the term "understatement of liability" means an understatement of the net amount payable with respect to the individual income tax imposed by (insert Title and Code of State), or an overstatement of the net amount creditable or refundable with respect to the individual income tax imposed by (insert Title and Code of State). The determination of whether there is an understatement of liability must be made without regard to any administrative or judicial action involving the taxpayer. For purposes of this section, the amount determined as an underpayment of estimated income tax is not considered an understatement of liability.

(n) For purposes of this section an individual shall not be considered, a tax return preparer merely because the individual:

- (1) Furnishes typing, reproduction, or other mechanical assistance.
- (2) Prepares a return or claim for refund of the employer, or an officer or employee, by whom the individual is regularly and continuously employed.
- (3) Prepares a return or claim for refund of any individual as a fiduciary for that individual.

(o) Except as otherwise provided, before the Board takes any final action to deny, suspend, or revoke a registration, the Board shall provide an individual an opportunity for a hearing before the Board.

(p) The Board shall investigate all complaints which allege a violation of this act. In the case where a complaint is filed with the Board involving an individual regulated by the Board of Accountancy, the complaint will be immediately forwarded to the Board of Accountancy. In the case of a complaint involving a member of the bar, the complaint will be immediately forwarded to the state bar association. In the case of a complaint involving an Enrolled Agent, unless the complaint is adjudged to be without merit, upon conclusion of the investigation and hearing or consent order, the complaint and results of Board action shall be forwarded to the Internal Revenue Service Office of Professional Responsibility.



**SECTION 7: Continuing authority of board.** The lapsing, suspension or revocation of a license by operation of law or by order of the Board or by decision of a court of law, or the voluntary surrender of a license by a licensee, shall not deprive the board of jurisdiction to proceed with any investigation of or any action or disciplinary proceeding against the licensee, or to revise or render null and void an order suspending or revoking the license.

**SECTION 8: Secretary of State as agent for service of process against nonresident; fee.**

(1) The acceptance by a nonresident of a license as a tax preparer under this Act shall be considered equivalent to the appointment by the nonresident of the Secretary of State as attorney upon whom may be served any summons, process or pleading in any action or suit against the nonresident in any court of this state, arising out of any business done by the nonresident as a tax preparer in this state.

(2) The acceptance of a license under this Act shall be considered equivalent to any agreement by the nonresident that any summons, process or pleading in the action or suit may be made by leaving a copy thereof, with a fee of \$[?], with the Office of Secretary of State. Such service shall be sufficient and valid personal service upon the defendant if notice of such service and a copy of the summons, process or pleading is sent forthwith by registered mail or by certified mail with return receipt by the plaintiff or the attorney of the plaintiff to the defendant at the most recent address furnished to the Tax Preparer Oversight Board by the nonresident tax preparer or to the last-known address. An affidavit of the plaintiff or the attorney of the plaintiff of the mailing shall be appended to the summons, process or pleading and entered as a part of the return thereof. However, personal service outside of the state in accordance with the statute relating to personal service of summons outside of the state shall relieve the plaintiff from such mailing requirement.

Any summons received or provided in this section shall require the defendant to appear and answer the complaint within four weeks after receipt thereof by the Secretary of State. The court in which the action or suit is brought may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action. The fee of \$[?] paid by the plaintiff to the Secretary of State shall be taxed as costs in favor of the plaintiff if the plaintiff prevails in the action. The Secretary of State shall keep a record of each summons, process or pleading served upon the Secretary of State under this section, showing the day and hour of service.

**SECTION 9: FEES**

(1) The Board shall adopt by rule fees for:

- (a) Application for examination for a tax preparer's license.
- (b) Issuance or renewal of a tax preparer's license.
- (c) Issuance or renewal of a tax preparer's inactive license.
- (d) Reactivation of a tax preparer's inactive license.
- (e) Restoration of lapsed license.
- (f) Issuance or replacement of a duplicate license.

(2) The fees established by the Board under this section are subject to the prior approval of the [State] Department of Administrative Services and, if their adoption occurs between regular sessions of the Legislative Assembly, a report to the Emergency Board. The fees may not exceed the cost of administering the regulatory program of the Board pertaining to the purposes for which the fees are established.

#### **SECTION 10: PROHIBITIONS: INCOME TAX RETURN PREPARERS**

- (a) On or after the effective date of this Act, no individual shall assist with or prepare or offer to assist with or prepare in any one calendar year five or more returns for other individuals or entities or assume final responsibility for completed work on such tax returns on which preliminary work has been done by other individuals for a fee or for other consideration who is not currently registered pursuant to, or exempted by Section 2 of this Act.
- (b) On or after the effective date of this Act, only those individuals registered under Section 3 or exempted under Section 3 of this Act shall assume or use the title or designation "tax preparer" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate or as a representation that such individual is a tax preparer.

**SECTION 11: Names of tax preparers and other information furnished by Department of Revenue; use of information.** (1) If a personal income tax return is prepared by someone other than the taxpayer, the Department of Revenue may furnish to the Tax Preparer Oversight Board a copy of that portion of the return that shows:

- (a) The name, business name and address of the preparer;
- (b) The date of preparation; and
- (c) The signature of the preparer.

(2) In instances where the department or the board has reasonable grounds to believe the person preparing the return prepared it in violation, the department may furnish the following additional information:

- (a) The name and address of the taxpayer;
- (b) The identifying number used on any form, report or schedule filed as part of the return; and
- (c) The tax year reported on the return, or any portion of the return.

The board, its members, officers and employees, shall use the names and addresses furnished under this section solely in the enforcement of the tax preparer provisions and shall not otherwise divulge or make known such information.

#### **SECTION 11: SEVERABILITY**

If any clause, sentence, paragraph, section or part of this Act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof but shall be applied in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which such judgment shall have been rendered.

**SECTION 12: EFFECTIVE DATE**

This Act shall take effect on January 1 after the date of enactment; provided, however, that the Board shall be authorized, as of the date of enactment, to promulgate any rules and regulations and take any other actions necessary for implementation of this Act on such effective date.