

Oral Testimony of Michael Nelson
Executive Vice President, Government Relations
National Association of Enrolled Agents
before the Internal Revenue Service
Public Hearing on Proposed Regulations
August 24, 2010

Thank you, gentlemen, for the opportunity to testify before you today. My name is Mike Nelson and I am the Executive Vice President of the National Association of Enrolled Agents (NAEA). I am pinch-hitting today for the chair of our government relations committee and our government relations director, both of whom are at the IRS Nationwide Tax Forum.

NAEA represents the interests of some 46,000 enrolled agents across the country. This organization strongly supports Commissioner Shulman's efforts to set standards for the return preparation industry. We believe these proposed PTIN user fee regulations are both necessary and reasonable and have submitted written comments in that regard.

I will limit my comments today to three items—the annual renewal cycle; the size of the user fee; and, the agency's plans for enforcement and public awareness.

Annual renewal cycle

The enrolled agent renewal cycle is three years—and has been for well over two decades. The PTIN renewal process, which largely overlaps the EA renewal process, is annual. This proposal creates an environment in which enrolled agents (as well as enrolled retirement plan agents or ERPAs) must renew their representation licenses every three years and their PTINs annually.

I take this opportunity to request that EAs and ERPAs be allowed to use their currently-issued IRS enrollment numbers rather than taking part in a largely duplicative process that is as far as we can tell driven by the inability of IRS databases to communicate with one another

If the agency cannot accommodate this request, I ask that the Form 8554 renewal (and its ERPA counterpart) also serve as the vehicle for PTIN renewal.



User fee size

The regulations set forth a user fee of \$50, which on its face does not appear unduly burdensome on members of the profession. We continue to be strong supporters of return preparer oversight and believe to advocate for oversight without advocating for adequate resources is to give the agency a gun without providing it bullets. To put a finer point on it, without adequate staff and dollars, an oversight program cannot meet its objectives.

OMB Circular A-25 requires fees to be based on the cost to the government of providing the service. The proposed regulations, however, do not reveal how IRS arrived at what appears to be the suspiciously round number of \$50. While we concede that \$50 is not unduly burdensome, our real concern is that it is adequate to provide the Service with the resources it truly needs to run the program. As I stand here, we do not know what assumptions the agency used in its costing process, particularly with respect to enforcement and outreach efforts, both of which we believe will be critical to the program's ultimate success. Letting in some sunshine on the calculation may alleviate our concerns on this issue.

I have heard some colleagues suggest that the \$50 fee is excessive and that fees for PTINs as well as fees for testing and continuing education will unacceptably drive up the consumer price for return preparation. Enrolled agents respectfully disagree with those who draw this conclusion. As NAEA has cautioned throughout this process, the agency's objective must be to provide taxpayers with reasonable assurance that the person they are paying to prepare their returns is at least minimally competent to do so, whatever the return's complexity. Of all people, those of you here at IRS know the significant costs to taxpayers who were led down the primrose path by unscrupulous preparers only to find themselves under IRS audit. They would have gladly paid a little extra up front for assurances that their tax "professional" knew what he was doing.

Enforcement and public awareness

The oversight program is to be largely funded through user fees, which we believe is appropriate as user fees will prevent IRS from playing zero-sum games with its existing appropriations and from pitting one worthwhile program against another.

The Service has not explained its strategy for staffing the return preparer oversight program (as I alluded earlier) and this causes some concern amongst the enrolled agent community. Focusing on PTINs, enrolled agents would like assurance that the agency has an enforcement program in place that will address paid preparers who 1) sign a return but do not affix a PTIN; 2) sign a return but affix an invalid PTIN (or a PTIN belonging to another preparer); or 3) prepare a return, take payment for it, and present to a client a return marked as self-prepared.

A robust public awareness program should help prevent the third scenario, but we don't know what efforts the agency is taking to inform taxpayers that anyone whom they hire to prepare a return must sign the return and affix a valid PTIN. Again, we believe the Service simply must make the public aware of the new preparer rules.

Moreover, once testing is available and the currently unenrolled start calling themselves “registered tax return preparers,” the agency must distinguish between the registered tax return preparers and current Circular 230 practitioners. As the agency makes return preparer oversight decisions, it has an opportunity to communicate to the public that **all** the current Circular 230 practitioners have unlimited preparation and representation authority. We suggest IRS not only has an opportunity, but also has an obligation to communicate these differences.

To close, IRS is clearly beginning to make headway through a series of regulatory changes and we congratulate the agency on its efforts to date. As the Service moves forward, specifically with decisions around exams and continuing education, it must always remember that competent return preparers—those who have tested and who maintain CE—are absolutely essential. The agency is about to create, at least temporarily, a structure in which those who have PTINs have not demonstrated competency and do not need to take continuing education. While this may be necessary in the short term, we believe that there will be ample opportunity for some unscrupulous preparers to overstate their credentials. We urge you to be cognizant of this fact and to create a CE and testing structure with all due haste.

Thank you once again. This concludes my testimony.