

# ***IF YOU ASK ME . . .***

**A COMPILATION OF COMMENTARIES ON  
TOPICS OF INTEREST TO THE TAX  
PREPARATION COMMUNITY**

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## **INTRODUCTION**

I have been preparing individual income tax returns as a paid tax preparer for people in all walks of life since February of 1972.

On my first day of work for my uncle's accountant in his storefront office, as a college freshman who had never even seen a Form 1040 before, my new boss took me to a desk in the outer office. He gave me a copy of a client's previous year's tax return and a briefcase full of papers that constituted the current year's tax "stuff" and told me to "jump in and swim".

And so I did. I learned how to prepare 1040s the absolute best way possible – by manually preparing 1040s. If I had a question about a tax return I would ask my boss, who would either take the time to explain the answer or tell me where to find the answer in his Commerce Clearing House tax library.

FYI, in the 40+ years that followed I have never used tax preparation software to prepare a Form 1040, or 1040A. To this day I still prepare all my clients' federal income tax returns manually.

And I have seen the 1040, and the tax preparation industry, change a lot over these past 40+ years.

What follows are my commentaries on issues of importance to the tax preparation industry. Most are updates of editorials I wrote for [TAXPRO TODAY](#), posts to my blog [THE WANDERING TAX PRO](#), or editorials at my website [THE TAX PROFESSIONAL](#).

I am truly interested in hearing what other tax professionals have to say about these issues. Please email your comments to me at [rdftaxpro@yahoo.com](mailto:rdftaxpro@yahoo.com) with "If You Ask Me" in the subject line. Let's start some discussions.

## **WHO SPEAKS FOR THE TAX PROFESSIONAL?**

A few years back at the National Association of Tax Professionals' annual year-end tax update seminar "The Essential 1040", which reviewed what was new for the 2013 Form 1040 and looked at recent tax legislation, court cases, and other tax developments, the instructor included a discussion of the Affordable Care Act, a.k.a. "Obamacare", and provided a preview of the complex calculations for the penalty that an individual or family without health insurance coverage must pay as part of their tax liability beginning with the 2014 tax return.

As I listened to the seminar leader explain this new mess being forced upon us, it occurred to me that one of the problems with the tax preparation industry is that we do not have a national organized "voice" to properly speak for the tax preparer with Congress or the Internal Revenue Service.

As Congress continues to incorrectly use the U.S. Tax Code to administer and distribute the benefits of social welfare and other government programs, and the IRS, in response, forces more and more excessive "due diligence," regulations, and requirements upon us, the job of the paid tax preparer becomes more and more complicated and involved. And we must just grin and bear it.

While the IRS, if not the Congress, does, from time to time, consult with its "stakeholders" on tax preparation issues, this is merely a "professional courtesy" and, I expect, does not carry much weight in the final decision-making process. The various tax preparer membership organizations do make sincere attempts to represent the paid preparer in Washington, but

the different organizations may have differing agendas, and no one organization has sufficient membership to provide the proper "weight" to any kind of serious and effective lobbying efforts.

At last count (10/1/2016) there were 727,230 PTIN-holders, but the largest of the tax return preparer professional organizations, the above-referenced NATP, has only about 25,000 members.

A good example of the need for a national tax preparation industry lobbying organization is the excessive "due diligence" requirements instituted a few years back for claiming an Earned Income Tax Credit, and the new ones for claiming the American Opportunity Credit and the refundable Child Tax Credit. Tax preparers must now also become social workers and determine whether an individual qualifies for federal welfare benefits. We have enough to do just to get a client to provide us with all the financial information necessary to properly prepare their 1040. We should not be forced to take on this added time-consuming responsibility.

While I no longer accept new clients, when the new due diligence rules for the Earned Income Credit were announced I said that if I did my personal response would be to not accept any new 1040 clients who will claim the EITC. But even if 1,000 more tax preparers had joined me in this action, it wouldn't have accomplished anything other than to reduce the tax-season agita for those of us who made the decision.

If there was a central national lobbying organization representing all paid preparers -- a PTIN Society -- this organization could have perhaps gone to the IRS and said that its membership strongly opposes the new requirement. Or "more better", told the IRS that if the new due diligence requirements were put into place its 700,000+ members will refuse to prepare tax returns that include an EITC. The organization could have then worked with the IRS to negotiate regulations that would be acceptable to both the government and the preparer.

And this organization could campaign against the continued high PTIN renewal fee, which is no longer necessary due to the death of the RTRP mandatory regulation regime.

Our national "voice" could also lobby members of Congress to pass serious tax reform legislation to simplify the 1040 by, among other moves, removing the EITC and other government benefit programs from the Tax Code. Or, if Congress were considering giving the IRS the authority to regulate all "unenrolled" preparers, it could lobby for a "grandfathering" exception for experienced tax pros to any initial competency examination.

Tax preparers truly need a unified "voice" in Washington, with real teeth, to speak for us. We should no longer be forced to just grin and bear it whenever the IRS or Congress attempts to make our lives more complicated.

Unfortunately the reality is that creating a new independent organization of tax preparers, or of PTIN-holders, would be difficult, time consuming, and expensive. I suggest an alternative - create a Tax Professional Advocacy Council that includes official representatives of the National Association of Tax Professionals (NATP), the National Association of Enrolled Agents (NAEA), the National Society of Accountants (NSA), the National Society of Tax Professionals (NSTP), and the Latino Tax Professionals Association (LTPA), and any other legitimate national tax preparer membership organization. This Council would be the voice of the tax professional, speaking with one unified voice for the combined memberships of all the organizations.

While it has been suggested by some tax professionals that the AICPA be included in the Council make-up, I hesitate to do so. The AICPA has its own agenda, which is very often contrary to the interests of non-CPA tax preparers. There are CPA tax preparers in the

memberships of NATP, NSTP, LTPA, and probably NAEA, so CPA preparers will be properly represented.

Each membership organization participating could add \$5 - \$10 to its annual dues to fund the operations of the Council, and can also offer members the opportunity to contribute additional funds to the Council. Perhaps the organization would establish a permanent office in Washington DC with minimal staff. I believe that, as a side benefit, the existence of such a lobby would be a help to the individual organizations in attracting new members. Joining a participating organization would add the voice of currently "unaffiliated" tax preparers to the lobbying efforts.

Last year I sent a letter to the Board of Directors of each of the tax preparer membership organizations mentioned above to ask that they work together to form a Tax Professional Advocacy Council as a voice in Washington for the tax preparer. The only response came from the National Society of Tax Professionals (NSTP) via a letter from the organization's President. The response included –

*"We do agree that our industry needs a united voice to be heard in front of Congress.*

*We believe that the Office of National Public Liaison serves this function – and they are a very vocal and outspoken group of tax practitioner representatives that form this group.*

*The IRS National Public Liaison committee meets ten times a year. Representatives from the National Society of Tax Professionals along with members of other national organizations such as the American Institute of CPAs, National Association of Enrolled Agents, National Society of Accountants, and other tax organizations make up the 20-member committee."*

This is not what I had in mind. It is certainly not the answer. An independent organization is needed. Tax preparer membership groups may be represented on this internal IRS committee, but I am not aware that they have not been effective in "protecting" the interests of tax professionals.

I was truly disappointed that no other organization, including NATP, had the courtesy to respond, even if only to disagree.

## **REQUIRED ETHICS CPE**

*In a review of a year-end CPE offering a while back I said - "And, of course, the annual 2 hours of redundant ethics preaching. No reflection on the seminar leader, but, for me (not legally required) this is a total waste of 2 hours, and I usually zone out or daydream during most of the presentation."*

This 2 hours of redundant ethics preaching can actually turn into 4 or 6 hours of wasted time each year, as most organizations who offer day-long CPE sessions feel they must include 2 hours of ethics preaching, regardless of the intended main topic, to insure maximum enrollment.

Forced ethics CPE will not reduce tax fraud! I have said time and time again over the years that if a person is crooked, forcing him or her to sit through 2 hours of redundant ethics preaching every year ain't going to turn him or her honest! I have been preparing 1040s for over 40 years. If I ain't honest by now – and I probably wouldn't have been able to remain in business for 40+ years if I were not – a 2-hour class ain't going to perform a miracle.

This annual 2-6 hours of redundant ethics preaching not only wastes our time but also our money – we are paying for 8, or 16, or 24 50-minute CPE hours of actual tax return related education, but are only receiving 6, or 12, or 18 CPE hours!

I do not need to take the same class on depreciation each and every year. I only need to be told of any new depreciation-related law or developments. So why am I forced (though not actually required) to sit through 2 or more hours of ethics each and every year to be able to properly prepare 1040s? If there is a true change or new development in the area of ethics or preparer penalties that it can be mentioned along with other new law or development as part of the annual update class.

The forced inclusion of 2 hours of redundant ethics preaching in the annual year-end tax update class can actually diminish the benefit of the class for tax preparers. The discussion of important topics can be cut short, and/or one or more court case, or new revenue ruling or other development, although included in the text, is often skipped over in the classroom presentation and discussion, when it really is important enough to be reviewed in detail, because the instructor must be sure to have 100 minutes left at day's end for the ethics nonsense.

## **PURE NONSENSE**

While, as I admitted above, my mind tends to wander during the required 2 hour "ethics" sermon we must sit through at least once each year during continuing education sessions, I do listen in on the discussion every now and then. Hearing all the rules and requirements enacted in the name of privacy and security it is obvious that regulation has gone overboard. Much of what the instructor discusses is, to be perfectly honest, totally ridiculous.

Say I was talking to a friend, who was also a client, in a public place and another client, let's call him George, who my friend coincidentally also knows, happened along, saying hello to us in passing. If my friend asked me, "How do you know George," I would normally think nothing of replying, "I have been doing his taxes for years".

But by doing so, I am told, I would be seriously violating "privacy" rules!

The issue of privacy applies to what the client tells me about his/her personal finances, and not the fact that they are clients or friends. Obviously I am not allowed to discuss the details of George's Form 1040, or any other financial or personal information I was told in confidence in the course of preparing his return, with my friend. But not being able to simply mention that he is also a client is pure nonsense.

If a friend or fellow client asks the question in casual conversation I do not see a problem. If a stranger comes up to me out of the blue and asks if and how I know a client I will be on my guard and ask why they want to know. And if a stranger, to me, or only a casual acquaintance, comes up to the two of us and asks how we know each other I will let the client with me respond first and take my lead from him/her.

Many tax pros (not me anymore) have "waiting rooms", which are often crowded during the tax season. We do not segregate clients in individual cubicles so they do not see each other, or ask them to wear masks while sitting in the waiting room. Often in the past, when I did have an office open to the public, I had a client enter my waiting area and be surprised to see a friend or co-worker sitting there. Nobody ever ran out of the office in fear because they were seen there.

I am certainly not going to take out a full page ad with my client list in the local newspaper. But the fact that a person is my client is not a state secret.

It is different with a doctor, whose specialty may “betray” personal medical information that the client does not want known. And perhaps, for the same reason, with certain lawyers, such as the divorce attorney. But there is nothing revealing in the mere fact that a person uses a professional to prepare his/her tax return, other than the intelligence of the person.

## **THE REGULATION OF PAID TAX PREPARERS**

I oppose the mandatory licensure of all paid tax preparers by the Internal Revenue Service, or any government agency.

When the Registered Tax Return Preparer (RTRP) concept was first introduced by the IRS I reluctantly supported it, provided it included a “grandfathering” exemption from the initial competency test for experienced preparers and did not exempt CPAs or attorneys who wanted to prepare 1040s for compensation, because –

- I assumed it was a fait accompli,
- I preferred to have the program created by the IRS than the idiots in Congress, and
- Any Tom, Dick, or Harriet, without any education, training, or experience preparing 1040s, can purchase a tax preparation software program and hang out a shingle as a “professional tax preparer”; the taxpayer public needs to be able to properly identify competent and qualified tax preparers, and the RTRP designation would help taxpayers to do so.

When Dan Alban and the Institute for Justice first challenged the program in *Loving vs IRS*, while I did not accept the contention that the cost of required continuing professional education would be prohibitive for many tax preparers (I believed that if serious tax preparers were not already taking at least the amount of annual CPE required under the RTRP program then they should be), I did agree that the IRS did not have the legal authority to regulate the preparation of tax returns – preparation is not practice - and supported the effort. I was pleased when the Institute won and the victory was upheld.

I do wholeheartedly support the creation of a uniformly accepted voluntary credential/designation for those who prepare 1040s for compensation – mostly because of the “Tom, Dick, and Harriet” reason listed above.

I would prefer that the designation be administered by an independent, industry-based organization. But I would support a voluntary program administered by the Internal Revenue Service in tandem with the current Enrolled Agent Program.

I believe the current IRS voluntary “Annual Filing Season Program” is impotent and provides no real benefit to tax professionals.

I do agree that the IRS has the right to require all paid tax preparers to register and be issued a PTIN, but I oppose the continued excessive cost of initial and annual registration.

## **IT’S TIME FOR AN INDEPENDENT CREDENTIAL FOR TAX PREPARERS**

As we all know the U.S. District Court shut down the Internal Revenue Service attempt at regulating all “previously unenrolled” paid tax return preparers, and did away with the Registered Tax Return Preparer designation that would eventually be required of all such individuals who wanted to prepare federal tax returns for compensation. The IRS decided not to appeal the decision.

Do we really need the IRS to require federal "licensing" of paid tax return preparers?

The service already regulates preparers, both those permitted to "practice" before the IRS, like CPAs, attorneys and Enrolled Agents, as well as the "previously unenrolled" preparers who would have become RTRPs, via Circular 230. There have been "preparer penalties" for many years now.

Paid preparers are required to sign and enter their "identification number" (originally their Social Security number) on all tax returns that they prepare for a fee. In the late 1990s the IRS created the Preparer Tax Identification Number, or PTIN, as an alternative to the Social Security number to help prevent identity theft. The court case kept in place the requirement for all paid preparers to register with the IRS and receive a PTIN -- so the service has the central registry of paid tax preparers that it needed.

I have been preparing 1040s for individuals in all walks of life since February of 1972. Prior to the initiation of the IRS regulation regime, for as long as I have been in the business and the years before, anyone could prepare a federal income tax return for a fee. There were absolutely no requirements. And the federal income tax system has managed to survive for almost 100 years.

Basically a tax preparer is someone who assists an individual or couple to prepare a required federal form. The 1040 (or 1040A) is a federal form, not unlike a census form or a federal student financial aid form (albeit more complicated). The taxpayer is responsible for all the information reported on the form -- the preparer provides guidance to the taxpayer on what is required to be reported and how to record it on the return.

The IRS argues that their required licensing of paid preparers would reduce tax fraud. This is not true. Regardless of any required licensing program, crooked taxpayers will always find crooked or unethical preparers, "underground" or otherwise, and crooked or unethical preparers will always find willing or naive taxpayers. Licensing and regulation of CPAs did not prevent Enron.

There is no real "need" to require federal "licensing" of paid tax return preparers. But there is a problem that needs to be addressed.

The problem is that any Tom, Dick or Harriet can hang out a shingle as a "tax preparer," regardless of education or ability. The situation got worse with the introduction of tax preparation software. Any Tom, Dick or Harriet, with absolutely no training, experience or knowledge, can simply purchase a tax preparation software package and try to pass themselves off as a "tax professional."

Without some kind of accepted certification program the taxpaying public has no way of knowing if a person who says that they are a professional tax preparer has any training or experience in, or actual knowledge of, preparing tax returns (except for individuals who have the initials EA after their name).

The answer would be some kind of voluntary "certification program" where a tax preparer could receive a universally accepted professional designation based on testing or credentials and maintained by required annual continuing professional education in federal taxation. The taxpaying public would then know that a preparer possessing this designation has proven basic competence in preparing 1040s and remains current in tax law.

The IRS already has such a program that designates preparers as EAs. However, this designation includes the ability to "practice" before the IRS and, as such, the enrollment examination is very extensive and includes issues of taxpayer representation. Many

preparers, like myself, are happy just preparing returns and are not interested in taxpayer representation.

What is needed is a voluntary lower-level designation related to preparation only – like the Registered Tax Return Preparer (RTRP) designation. You could look at it like this: The RTRP-like designation is like an undergraduate degree and the EA is like a Master's. But the IRS did not go this route. Instead it created a useless voluntary continuing education Annual Filing Season Program (AFSP) that provides tax preparers with a "Record of Completion" instead of an actual initialed credential or designation.

But the IRS is not the best choice to administer a voluntary certification program. In the case of all other professions, like CPAs, attorneys, architects and medical doctors, the maintenance of the professional certification designation is done by an independent industry-based organization such as the American Institute of CPAs, the American Bar Association, the American Institute of Architects, and the American Medical Association.

And so for professional tax preparers, any voluntary certification program, which issues a, for example, "Certified Tax Preparer" credential should be administered by an independent industry-based organization like a "National Institute of Certified Tax Return Preparers."

There have been many attempts at voluntary certification of tax return preparers -- creating a designation for tax preparers (Certified Tax Professional, Chartered Tax Preparer, etc.) -- over the years. But none have been successful because they were offered by individual membership or CPE organizations and were not universally accepted by the industry.

Such an institute would be an independent, nonprofit organization established solely for the purpose of issuing, maintaining and promoting the tax-preparation designation. Its governing board will consist of a representative (perhaps the executive director or board president) of the National Association of Tax Professionals, the National Society of Tax Professionals, the National Society of Accountants, and any other appropriate tax-related membership organization, and at least two independent "previously unenrolled" practicing tax professionals.

In order to receive the designation, a candidate must possess a valid PTIN and pass a competency test on federal 1040 tax law. A "grandfathering exemption" from this test would be allowed for:

- Tax professionals who have been consistently preparing federal income tax returns on at least a half-time basis (during the traditional tax filing season) for at least five full years and who have successfully completed a total of 48 hours of continuing professional education in federal taxation in the three-year period (36 months) prior to applying for the designation.
- Tax professionals who have passed the IRS-sponsored competency test and been designated as an RTRP under the IRS tax return preparer regulation regime.
- Tax professionals who have been licensed or certified to prepare income tax returns under a required state program that includes a competency test.
- Individuals who have successfully completed a certificate or certification program in federal income taxation offered by an accredited educational institution or a qualified membership organization that includes testing.

The "grandfathering period" would last for two or three years following the initiation of the certification program. Tax preparers who want to take advantage of the grandfathering exemption from testing would need to apply for the designation during this period.

Participants would need to renew their designation every three years by submitting proof of completion of a total of 48 hours of CPE in federal taxation during the three-year period, with at least fifteen hours each year. The 48 hours must include four hours of "tax updates" per year and one hour of "ethics updates" within the three-year period.

Qualified CPE providers would include accredited educational institutions and organizations/companies accepted by the National Registry of CPE Sponsors. The overseeing organization would not need to separately approve CPE providers.

CPAs and attorneys would be welcome to apply for voluntary certification under this program as a way to acknowledge and identify their knowledge of and currency in 1040 preparation.

With the institution of such a voluntary certification program, taxpayers will be able to identify true "tax professionals" from among the choices they are faced with. More accurate and competent returns will be prepared. And competent, ethical "previously unenrolled" tax preparers will receive the recognition and respect that they deserve. Everyone benefits -- the taxpaying public, the IRS and the tax preparation industry.

As an alternative to creating a new organization, which would be a difficult task, and a new credential we can look to the already existing Accreditation Council for Accountancy and Taxation, created and currently administered by the "other" NSA (National Society of Accountants), and its Accredited Tax Preparer (ATP) and Accredited Tax Advisor (ATA) credentials. The ATP is for basic 1040 preparers and the ATA is for practitioners who handle more sophisticated tax planning issues, including ownership of closely held businesses, qualified retirement plans and complex estates.

An ATA must maintain 72 hours of CPE during each three-year cycle or 24 CPE hours per year, similar to the EA, and an ATP must maintain 90 hours during each three-year cycle or 30 hours per year. The 72 and 90 hours must include 4 hours of ethics preaching -- which is a bit better than the annual 2-hour requirement of the ATSP. These CPE requirements are in excess of the ATSP 18 hours per year, so these credentials clearly meet the alleged purpose of the ATSP - giving "unenrolled return preparers a way to stay to up-to-date on tax laws and changes".

The initial competency examination component of the ACAT tax credentials should satisfy National Taxpayer Advocate Nina Olsen. Her support of the IRS voluntary program was tentative; she felt the program should include an initial competency test requirement.

The ACAT would need to sever its direct link to the NSA to become a truly independent organization and add representatives of the other legitimate tax preparer membership organizations to its Board of Trustees and be publicly "recognized" by these other organizations, and the IRS, as "the" voluntary non-"practice" tax preparer credential.

## **WHAT THE IRS SHOULD HAVE DONE ABOUT THE RTRP**

The Internal Revenue Service invested a lot of time and money in its RTRP program. And before the program was shut down, the service forced tens of thousands of tax preparers to waste time and money to sit for and pass the competency test and be granted the now useless designation of RTRP.

Here is what the Internal Revenue Service should have done when the mandatory licensing regime was shut down by the court.

The IRS should have continued the RTRP designation as a voluntary program, as the court suggested. PTIN-holders, including CPAs and attorneys, should have been able elect to receive

the certification/designation of Registered Tax Return Preparer by meeting the requirements, just as they have been able to choose to be certified/designated as an Enrolled Agent.

The RTRP designation should have been made part of a voluntary two-tiered certification program that includes the Enrolled Agent designation.

A preparer, again including CPAs and attorneys, could first apply for and be granted the RTRP designation by way of a test that is limited to tax preparation (more involved than the original basic open-book basic test). Minimum annual CPE in federal tax topics would be required once the RTRP designation was granted. Those who had been designated an RTRP under the former regulation regime would be "grandfathered" into the new voluntary program, so the time and money they spent under the former mandatory RTRP program would not have been wasted.

After a year, an RTRP could elect to take a second test, with emphasis on taxpayer representation issues and other advanced topics, to become an ETRP (Enrolled Tax Return Preparer -- a new title for the current Enrolled Agent) and be permitted to "practice" before the IRS.

The voluntary RTRP program would allow competent "previously unenrolled" preparers the respect and acknowledgement that they deserve, based on their knowledge and experience, but do not currently receive. Allowing CPAs and attorneys who prepare tax returns to become an RTRP under the new voluntary program would provide these professionals with a credential in 1040 preparation, and therefore provide recognition of their competence and currency in preparing individual income tax returns. CPAs and attorneys who become RTRPs would have no need to go on to become an ETRP, as they are already permitted to "practice" before the IRS.

But instead of maintaining a voluntary RTRP program the Service decided to go with the relatively useless "Annual Filing Season Program" (AFSP). So we are back to the need for an independent tax preparer credential.

## **THERE ARE SO MANY THINGS WRONG WITH THE ANNUAL FILING SEASON PROGRAM**

After the Internal Revenue Service's mandatory Registered Tax Return Preparer licensure program was shut down by the courts in *Loving v. IRS*, the service suggested that it might institute a voluntary tax preparer credential program.

Instead IRS Commissioner John Koskinen has announced a new voluntary program supposedly "*designed to encourage education and filing season readiness*" called "the Annual Filing Season Program."

This program does not issue to those who meet its requirements an actual identifiable credential or designation, like "Registered Tax Return Preparer." Instead, those who qualify will be issued a "record of completion" and be added to an IRS public database of what was initially identified as "approved preparers."

To see the requirements of the Annual Filing Season Program click [here](#).

There are so many things wrong with this new program. Let me count the ways.

1. As previously stated, the program does not provide those who meet the requirements with an identifiable credential or designation, with accompanying initials that the recipient can use in advertising and promotion to identify their competence and currency in 1040 preparation.

Those who pass the test and take the CPE are merely placed on a list of IRS "approved" preparers and given a plaque to hang in their office.

If the IRS really wants to help the taxpayer public identify competent tax preparers, who have been tested and remain current, it must provide a method of publicly identifying them – such as an actual credential. The main purpose of a tax preparer certification program is to recognize proven educated, experienced, competent and up-to-date tax professionals via the "awarding" of an actual credential – as is done with Enrolled Agents.

2. The program does not call for an initial competency test. Instead, participants must pass an annual "comprehension test" upon completion of the required six-hour "federal tax filing season refresher course."

There should be one initial competency test. While it can be administered by individual CPE providers, it must be a universal test prepared by the IRS. Unlike the basic open-book test of the mandatory RTRP licensure program, the test should be more detailed and comprehensive. Participants should not be required to pass an additional test each and every year thereafter.

CPAs and attorneys who want to identify their competence and currency in 1040 preparation should be allowed to apply for the new designation and be able to display the new initials (i.e., John Q. Preparer, CPA, RTRP). In order to be awarded the new designation, and accompanying initials, CPAs and attorneys must have to meet the same competency test and annual CPE in taxation requirements as any other applicant.

3. The public database, if it will actually be used by taxpayers seeking professionals, could be large and confusing if it is merely an alphabetic listing of all "record of completion" preparers mixed in with others of "recognized credentials," some which nothing to do with 1040 preparation, and "higher levels of qualification and practice rights."

To be done correctly, the database should contain all PTIN-holders, since all individuals who have a valid PTIN are truly "approved preparers," listed alphabetically by category of designation. Instead of one big list, there should be separate lists for Enrolled Agents, recipients of the new voluntary designation (perhaps Registered Tax Return Preparer), unenrolled preparers, CPAs, attorneys, ERPAs, and enrolled actuaries.

The database should be prefaced with a statement that only Enrolled Agents and those holding the new voluntary designation have demonstrated competence and currency in 1040 preparation via testing and mandatory CPE in taxation.

4. Those who receive the new voluntary designation will not be allowed to "practice" before the Internal Revenue Service. Only "attorneys, CPAs, and Enrolled Agents will continue to have unlimited representation rights." *Loving v IRS* told us that "preparation" is not "practice."

So those who are awarded the new voluntary tax preparer designation should not be subject to any additional "duties and restrictions relating to practice before the IRS."

5. The new program should not be allowed to deny unenrolled tax preparers who chose not to participate the right to represent their clients before the service during an examination of a return that they have prepared and signed. All tax preparers with a valid PTIN must have the right to defend and explain, or assist their clients in defending and explaining, the tax returns they have personally prepared during the audit process.

It appears that tax preparers have not been rushing to participate in the AFSP. As of 10/1/2016 the total number of Annual Filing Season Program Records of Completion issued

was 62,508. This is less than 15% of the 429,455 "unenrolled" (not EAs, CPAs, attorneys) PTIN-holders.

I recently posed the following question to other tax professionals in a Facebook tax pro group – "Have you received any new clients from participating in the Annual Filing Season Program?" All the answers I received were "no". Having a "record of completion" did not in any way help their practice.

## **WHY IS THERE STILL AN EXCESSIVE PTIN FEE?**

For as long as I have been preparing 1040s, since February of 1972, paid preparers have been required to sign the tax returns they prepare.

On the 1971 return the preparer signature attested that: *"Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete."*

The sentence, *"Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge,"* was added to this statement sometime thereafter.

The 1977 return was the first that required, in addition to a signature, the preparer's "identifying number", later specifically referred to as the preparer's Social Security number. Beginning with the 1978 Form 1040, the preparer's "Firm's name (or yours if self-employed), address and ZIP code" and its corresponding Employer Identification Number had to also be entered on the return under a section called "Paid Preparer's Information."

In an attempt to avoid identity theft, a "Preparer Tax Identification Number", or PTIN, was created as an alternative to listing one's Social Security number on the return. The 1999 Form 1040 was the first that asked for the preparer's "SSN or PTIN", and the first return on which I entered my PTIN, which is the same PTIN I use today.

Beginning with the 2010 return, all paid preparers were required to register with the IRS and obtain a PTIN as part of the new IRS mandatory Registered Tax Return Preparer regulation regime.

Up to the 2009 return, a PTIN was optional, and paid preparers could still use their Social Security number when signing a return. And up through 2009 there was no fee for applying for a PTIN, and one never had to renew one's PTIN.

As a part of the IRS regulation regime, tax preparers were required to pay an initial \$64.25 to receive, or "refresh" an existing, PTIN. PTINs were required to be renewed annually at a cost of \$63.00. The PTIN fee was established as a method of partially funding the mandatory RTRP program, and annual renewal was initiated so that the preparer could verify that they had taken the required hours of continuing professional education.

With the death of the mandatory RTRP program, there is no need to charge a substantial fee, or any fee, for acquiring or maintaining a PTIN. And there is really no reason for annual renewal. A preparer's PTIN could be renewed every three years, at no charge, so the IRS could remove preparers who no longer prepare from the system.

The IRS truly needs to maintain a registry of tax return preparers, via the issuance of a PTIN, and the judge in *Loving v. IRS* allowed the IRS to continue to require that all paid preparers register with the service and receive a PTIN. But, although the court in another case (*Brannen, III, P.C. v. U.S.*, No. 11-14138) has upheld the ability of the service to charge a PTIN fee,

\$50.00 is now certainly excessive and unjustified. I support the current class-action lawsuit that challenges the PTIN fee.

## **THE TAX CODE NEEDS TO BE REWRITTEN FROM SCRATCH**

I am a tax professional who has been preparing Form 1040s for compensation for individuals in all walks of life since 1972. As a tax preparer I know full well that the United States Tax Code has grown into what I frequently refer to as a "mucking fess".

The major reason for tax return errors, by both paid tax preparers and taxpayers who "self-prepare", is the excessive complexity of the Tax Code.

The current Tax Code needs to be shredded and totally rewritten from scratch.

I also strongly believe that the one and only purpose of the Tax Code is to raise the money necessary to fund the government.

The new Tax Code must –

- (1) Be simple – easy for everyone to understand. Simplicity for simplicity's sake.
- (2) Be fair and equitable - treat all taxpayers equally.
- (3) Be consistent – treat specific conditions, situations, and activities, and maintain specific definitions and descriptions, the same in all instances.
- (4) Encourage savings, investment, and growth.
- (5) Index for inflation all allowable deductions and credits.

The new Tax Code must not –

- (1) Be used for social engineering, to redistribute income or wealth, or to deliver social welfare and other government benefits.
- (2) Encourage or discourage certain economic decisions (other than savings, investment, and growth), or provide exclusive benefits for specific industries, business activities, or classes of taxpayers.
- (3) Contain any refundable credits, or any phase-outs, exclusions or adjustments based on Adjusted Gross Income or Modified Adjusted Gross Income.
- (4) Contain any "alternative" tax calculation systems (such as the current "Alternative Minimum Tax").
- (5) Contain any temporary deductions, credits, benefits, or provisions.

This new Code would state "Everything is taxable, except . . ." and "Nothing is deductible, except . . .". Only those "excepts" – exclusions and deductions - that are absolutely necessary and appropriate, in the context of the "musts" and "must nots" listed above, should be added back.

One of the biggest problem with the current system is the inappropriate use of the Tax Code to deliver social welfare and other government benefits – hence its appearance as #1 on the

list of “must nots”. This practice is not only inappropriate, but it also invites and encourages tax fraud.

The Internal Revenue Service, and the tax professional community, should not be required to act as Social Workers and administer and verify government program benefit payments.

I am not saying that the government shouldn't provide financial assistance to the working poor and college students, provide encouragements for purchasing health insurance, making energy-saving purchases and improvements and other “worthy” actions, . What we are saying is that such assistance and encouragements should not be distributed via the tax return.

The benefits provided by the Earned Income Tax Credit and the refundable Child Tax Credit should be distributed via existing federal welfare programs for Aid to Families with Dependent Children. The benefits provided by the education tax credits and deduction for tuition and fees should be distributed via existing federal programs for providing direct student financial aid. The benefits provided by the Premium Tax Credit, the energy credits, and other such personal and business credits should be distributed via direct discount payments to the appropriate vendors or direct rebate programs funded by the budget of the appropriate Cabinet department.

Distributing the benefits in this manner is much better than the current method for many reasons:

1. It would be easier for the government to verify that the recipient of the subsidy, discount or rebate actually qualified for the money, greatly reducing fraud. And tax preparers, and the IRS, would no longer need to take on the added responsibility of having to verify that a person qualifies for government benefits.
2. The qualifying individuals would get the money at the “point of purchase,” when it is really needed, and not have to go “out of pocket” up front and wait to be reimbursed when they file their tax return.
3. We would be able to calculate the true income tax burden of individuals. Many of the current “47 percent” would still be receiving government benefits, but it would not be done through the income tax system, so they would actually be paying federal income tax.
4. We could measure the true cost of education, housing, health, energy and welfare programs in the federal budget because benefit payments would be properly allocated to the appropriate departments.

Some people may wonder why a tax professional is calling for a simpler tax system. Does not each new tax law, and each complexity added to the code, put money in our pockets? Is not a more confusing Tax Code better for business.

I believe that a much simpler tax system would not hurt our business. I truly feel that if I did nothing but 1040As all day during the tax season I would make more money, experience less agita, and substantially reduce the number of GD extensions needed.

Most clients would not decide to do their own returns if the tax system was simplified; they would continue to come to us. Most taxpayers who use a tax professional simply don't want to be bothered with the task of preparing their tax return, and want to make sure they do not miss anything.

## **DOING AWAY WITH THE DEDUCTION FOR DEPRECIATION OF REAL PROPERTY**

Here is a controversial tax reform proposal I first put forward in 2007. What if we did away with the depreciation deduction for real estate – on the Form 1040 and on all the various entity tax returns?

According to the IRS, depreciation is *"an income tax deduction that allows a taxpayer to recover the cost or other basis of certain property. It is an annual allowance for the wear and tear, deterioration, or obsolescence of the property"*.

Let's look at depreciation from the point of view of the Income Statement. Basically, if you purchase an asset (i.e. equipment, a vehicle, or real estate) that will last more than one year you spread the cost of the asset over its "useful life". You purchase a new computer. You certainly do not purchase a new computer each year – you expect that it will continue to provide service for several years. So you divide the cost of the computer over a period of years to reflect this fact, and to properly report the economic reality of the purchase.

If you deducted the full cost of the computer in the year of purchase this would distort the true cost of doing business. Since you generally purchase a new computer every five years, claiming a deduction of 1/5 of the cost each year "more better" represents your cost of operations.

Thus depreciation is used to *"recover the cost or other basis of certain property"*.

Another way to look at depreciation is from the Balance Sheet perspective. When you purchase an asset that asset has value to you. You trade the asset of cash for a computer. If you sold your business the value of the computer would be included in the value of the business. As an asset ages its value drops. A two-year old computer does not have the same value in the market as a comparable brand new computer. Depreciation is used to reflect the drop in value of the asset.

Thus depreciation is used to reflect the *"wear and tear, deterioration, or obsolescence of the property."*

There are several ways to depreciate an asset. The simplest method is "Straight Line". You deduct the cost of the asset evenly over its life. If you purchase a computer for \$1000 and you expect it to last for five years you would deduct \$200 per year. There are also "accelerated" methods which recognize that the value of an asset will be reduced disproportionately, with the reduction in value being greater in the earlier years. As you well know, when you buy a new car it drops in value the minute you drive it off the lot.

To simplify matters, the government provides guidelines for the "useful" life of different types of assets. The current depreciation system is called the "Modified Accelerated Cost Recovery System" (MACRS), which came about with the Tax Reform Act of 1986. MACRS is divided into two separate depreciation systems:

General Depreciation System (GDS) – this is "regular" MACRS and is used most often. It provides the shortest "recovery periods". You can use the accelerated "150% Declining Balance" method or the Straight Line method over the GDS recovery period.

Alternative Depreciation System (ADS) – you can elect to deduct the cost of the asset over a longer life using the Straight Line method.

MACRS allows the cost of the asset, other than real estate or improvements thereto, to be deducted over 3, 5, 7 and 10 years. The most common recovery periods are 5-year, for cars, computers, copiers, typewriters and software, and 7-year, for furniture and fixtures.

For tax deduction purposes depreciation begins when the asset is "placed in service" and not necessarily when it was purchased. If I purchase and pay for a computer online in December of 2016, but the computer is not delivered to my office until the first week of January 2017, then depreciation begins in January and I can begin to deduct depreciation on the computer in tax year 2017.

Tax rules call for a "half-year convention", which treats all assets whose cost recovery begins during the year as being placed in service on the midpoint of the year. It basically allows for 6 months of depreciation. Under certain circumstances assets can be depreciated using a "mid-quarter" convention, provided a greater first year depreciation for assets purchased early in the year.

Real estate is treated differently in the Tax Code. First of all the cost of land is never depreciated. So one must remove the value of the land from the purchase price of the property. The adjusted purchase price of Residential Real Estate, including residential rental property, is recovered over a "useful life" of 27.5 years. Non-residential Real Estate, i.e. commercial property, has a useful life of 39 years. The depreciation of real estate uses a "mid-month" convention.

If we look at economic reality, a building has a life of much more than 27.5 or 39 years. A building I lived in over a decade ago was 100 years old and still going strong. And, for the most part, the value of real estate does not drop in value over the years. If properly maintained its value will generally increase. My parents purchased their first home for \$13,000 and sold it many, many years later for \$75,000 (and they were robbed).

When a property is sold you must "recapture" any depreciation that was "allowed or allowable", so the depreciation deduction is in reality just a loan from the government.

For all intents and purposes, again for the most part, real estate does not "depreciate". You do not replace a building every few years because it no longer provides the same service or function. And the value of real estate as a component of the value of a business does not drop as it ages. So why do we allow a tax deduction for the depreciation of real estate?

Doing away with the depreciation deduction would provide the federal and state governments with additional tax money upfront, instead of having to wait years or decades till the property is sold to finally collect it. Without this deduction Despicable Donald would have actually had to pay income tax.

And bottom line - doing away with the depreciation deduction would more correctly tax the actual economic activity.

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As I said at the beginning - I am truly interested in hearing what other tax professionals have to say about these issues. Please email your comments to me at [rdftaxpro@yahoo.com](mailto:rdftaxpro@yahoo.com) with "If You Ask Me" in the subject line. Let's start some discussions.

***COMING SOON – "SO YOU WANT TO BE A TAX PREPARER"***

# TAX PROFESSIONAL FORMS, SCHEDULES, WORKSHEETS, AND CLIENT HANDOUTS

I have been preparing 1040s since 1972. Over the years I have developed a collection of forms, schedules and worksheets that have proven very helpful in my practice. I offer this compilation, with some sample client handouts, to you for **only \$8.95!**

Some forms are given to clients to help them provide me with the information I need to prepare their returns. Some are used as "memos" to the client's copy and my office file copy to back-up items reported on the returns. Others are used as attachments to the returns.

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Employee Business Expenses – Police Officer  
Conventions, Conference and Education  
Miscellaneous Expenses #1  
Miscellaneous Expenses #2  
Summary of Casino Gambling Activity Log  
  
Alternative Minimum Tax Worksheet  
Does Not Have To File  
Joint Vs Separate Analysis  
Statement of Dividend Income  
Statement of Pension Income – in "landscape" format- sent separately  
Form 1040 Comparative Analysis

Allocation of Expenses  
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Auto Mileage Log  
Business Expenses of a Freelance Writer  
Business Travel Record  
Computer Use Log  
Election to Deduct Organization Expenses  
Employee Expense Report  
Employee Time Card  
Home Office Deduction Worksheet  
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# MORTGAGE INTEREST GUIDE - REPRINT RIGHTS

*"I ordered the guide "the limited reprint rights" version for \$11.95. I must say that it was the best \$11.95 I have ever spent. There is a wealth of information in that guide, some I knew and some I didn't. Hey, folks spend the \$1.00 to look it over and see if it is something you can use. I guarantee you it will be worth your \$1.00. I printed it out and put it in my Quickfinder binder to have as a reference for future tax seasons."*

Susan Bure, PA NATP

In my opinion the area of the Tax Code where proper documentation and strict adherence to the law is perhaps the most overlooked (or actually ignored) is the deduction for mortgage interest - both on Schedule A and Form 6251.

Taxpayers are required to keep separate track of acquisition debt and home equity debt, to make sure that the deduction on Schedule A does not include interest on debt principal that exceed the statutory maximums, and to determine what interest deduction to add back on Form 6251 when calculating Alternative Minimum Taxable Income. However, I firmly believe that 99.5% of taxpayers do not do this. I do not know of any taxpayer who does. And I expect that the majority of tax preparers do not do this for their taxpayer clients.

I have created a **MORTGAGE INTEREST GUIDE**. In it I explain the various types of mortgage debt and the deduction limitations, and go into detail on how refinancing an acquisition debt mortgage can result in home equity debt.

I include in this guide two worksheets - one for Acquisition Debt Activity and one for Home Equity Debt activity - and provide a detailed example of how to use the worksheets.

My **MORTGAGE INTEREST GUIDE** is a great way for tax preparers to introduce new homeowners to the rules and responsibilities for deducting mortgage interest. You can give this guide to clients who have just purchased a new home, or offer it as a free "gift" to new homeowners in your town as a part of a marketing and promotion program to get new clients. And the debt activity worksheets in the guide are excellent tools for use in your practice if you choose to maintain the documentation for your clients.

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# TAX GUIDE FOR NEW HOMEOWNERS

by veteran tax preparer Robert D Flach  
the internet's "Wandering Tax Pro"

This guide is a detailed discussion of all of the special tax benefits available to homeowners, including -

- ✓ itemized deductions for real estate taxes, mortgage interest, refinancing, points, and mortgage insurance premiums
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- ✓ rental income and deductions for a 2-family home,
- ✓ the home sale exclusion, and
- ✓ Alternative Minimum Tax issues.

It also contains sections on "Choosing A Tax Professional" and "What's New In Taxes for 2016" and special worksheets, with detailed instructions, on how to keep track of the different types of mortgage interest.

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