



January 14, 2011

VIA ELECTRONIC MAIL

Matthew D. Lucey
Office of Associate Chief Counsel (Procedure and Administration)
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Re: Notice 2011-6, Implementation of Rules Governing Tax Return Preparers

Dear Mr. Lucey:

The Office of Advocacy (Advocacy) commends the Internal Revenue Service (IRS) for taking into account the concerns of the small business community in IRS Notice 2011-6. Notice 2011-6 provides the relief requested by small business return preparers from some of the new IRS registration, testing, and education requirements related to preparer tax identification numbers (PTINs).¹

Advocacy was established pursuant to P.L. 94-305 to represent the views of small business before Federal agencies and Congress.² Advocacy is an independent office with the Small Business Administration (SBA), so the views expressed in this letter do not necessarily reflect the views of the SBA or the Administration. Section 612 of the Regulatory Flexibility Act (RFA) also requires Advocacy to monitor agency compliance with the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act.³ Advocacy takes its direction from small businesses and regularly hosts roundtables to receive input on what issues are of greatest importance to small business.

A year prior to issuing Notice 2011-6, the IRS made findings and recommendations in Publication 4832, "Return Preparer Review," concerning the results of a review of the tax return preparer industry.⁴ In the publication, the IRS recommended increased oversight of tax return preparers through the issuance of rules related to PTINs. The IRS also announced that it intended to subject the preparers who obtain PTINs to competency testing requirements, continuing education requirements, and the extension of the ethics rules under 31 CFR Part 10 (reprinted in Treasury Department Circular 230). During the past year, the IRS issued a series of guidances to implement these recommendations.

Advocacy is aware that small businesses have expressed concern to the IRS over the new PTIN requirements. Two particular small business PTIN concerns were discussed at Advocacy roundtable meetings during 2010. First, small business owners and their representatives worried about the burdens associated with subjecting nonsigning tax return preparers to the testing and education requirements related to PTINs. Preparation of

¹ <http://www.irs.gov/pub/irs-drop/n-11-06.pdf>.

² 15 U.S.C. § 634a (1976). http://www.sba.gov/advo/laws/law_sta.html#634a.

³ Pub. L. No. 96-354, 94 Stat. 1164 (1981) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. §612(a).

⁴ <http://www.irs.gov/pub/irs-pdf/p4832.pdf>.

returns in a CPA firm often involves the use of staff who are working toward CPA status, some of whom have passed the CPA exam, but have not yet fulfilled a one or two-year experience requirement for licensure. Additionally, paraprofessional personnel in CPA firms sometimes assist in tax return preparation. Mandating new education and testing requirements for personnel supervised by a signing CPA would place a significant financial burden on CPA firms that are small businesses.

Second, small businesses owners that sponsor or administer employee benefit plans expressed concern that those responsible for preparing a Form 5500, Annual Returns/Reports of Employee Benefit Plan, would be subject to the new PTIN requirements. Plan administrators, who are already subject to oversight and education requirements, believed that the new PTIN requirements would be duplicative, costly, and burdensome.

We are pleased that the IRS listened to the concerns of small business and made changes to Notice 2011-6. Notice 2011-6 addressed the concerns of small business stakeholders by creating an exception so that staff who assist in preparing all or substantially all of a return, but do not sign the return, and are supervised by an attorney, CPA, or enrolled agent, can obtain a PTIN. Notice 2011-6 excluded such supervised staff from the competency exam and continuing education requirements set out in proposed regulations on Circular 230 standards of practice. Notice 2011-6 also exempted from the exam requirements preparers who do not prepare any Form 1040 series returns or accompanying schedules. Therefore, Notice 2011-6 exempted the employee plan administrators who prepare only Forms 5500 from the new requirements, relieving small businesses of the burdens that small businesses owners were anticipating.

Thank you again for your efforts on behalf of small businesses. Advocacy looks forward to working with the IRS in the future to determine ways to reduce the burdens faced by small businesses. If you have any questions or require additional information please contact me or Assistant Chief Counsel Dillon Taylor at (202) 401-9787 or by email at Dillon.Taylor@sba.gov.

Sincerely,



Winslow Sargeant, Ph.D.
Chief Counsel for Advocacy



Dillon Taylor
Assistant Chief Counsel Advocacy