



The Ferenczy Flash

FROM THE LAW OFFICES OF Ilene H. Ferenczy, LLC

The Latest Word in Employee Benefits . . .

UGH! PTIN FINAL REGULATIONS ISSUED: NO CHANGE TO DEFINITION OF “PAID PREPARER”

As part of an effort by the Commissioner of the Internal Revenue Service to better control return preparers, the IRS issued proposed regulations on March 26, 2010, to require paid preparers of returns to acquire a Preparer Tax Identification Number (PTIN), pay a fee, and meet examination and continuing education requirements. Despite many letters from practitioner groups pointing out that these regulations were overbroad, the IRS determined to retain the proposed definition of paid preparer in its final regulations, issued on September 30, 2010.

Under the now final definition, a “paid preparer” is **any individual who is compensated for preparing, or assisting in the preparation of, all or substantially all of a tax return or claim for refund of tax.**

Included in the definition of a “tax return” are Forms 5500, 5330, 5558, and 1099-R. The definition of paid preparer includes both the supervising professional – such as the CPA, lawyer, or enrolled actuary who is primarily responsible for the preparation of the form – plus anyone who performs services in relation to the preparation of the form, other than purely clerical, nondiscretionary work. For example, suppose that an individual retirement plan third party administrator (TPA) is in charge of a case load that includes the plan compliance work and the preparation of Forms 5500 for 50 clients. That individual TPA has an assistant who not only enters information onto the computer system for processing, but also evaluates the information for completeness, contacting and meeting with the client when necessary to identify and resolve gaps in the information. The assistant would likely be a paid preparer under the new regulations, and would be required to obtain a PTIN.

Obtaining the PTIN is not the most difficult part of the process, although it does require the payment of a \$64.25 fee to the IRS (\$50 goes to the IRS and \$14.25 goes to the folks who provided the online system to the IRS). Individuals who need a PTIN but are not already licensed to practice before the IRS must also pass a tax-related exam to become IRS Registered Tax Return Preparers. They must also complete tax-related continuing education requirements. Both the PTIN exam and the continuing education requirements will focus on broad-based tax issues, not just on benefits. Individuals who are licensed to practice before the IRS (and who are not subject to the examination and continuing education requirements) are: lawyers, CPAs, Enrolled Agents, Enrolled Actuaries, and Enrolled Retirement Plan Agents (ERPAs). These designations each have their own examination and continuing education programs, which are deemed sufficient under the new regulations.

Any preparer (whether or not currently licensed) may get a PTIN now, but unlicensed practitioners will need to pass the PTIN exam (yet to be developed) or earn one of the above designations by the end of 2013. It is expected that the tax-related exam will be available in mid-2011.

The new regulations are effective for tax returns prepared on or after January 1, 2011. The website is open for sign-ups: www.irs.gov/taxpros. You can also sign up using Form W-12.

Needless to say, we expect that many TPA firms need a significant number of their personnel to obtain and maintain the new PTIN. We also expect most retirement plan practitioners will prefer to obtain the ERPA designation before 2013 to the other alternatives for becoming licensed to practice before the IRS.

If you have any questions about the new requirements, please let us know.

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