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to regulate tax return preparers who routinely file returns on behalf of taxpayers.

Ken Berry, JD • Feb. 24, 2014

According to a new federal court of appeals case, the IRS doesn't have the authority to regulate tax return preparers who routinely file returns on behalf of taxpayers. Thus, the IRS is permanently enjoined from enforcing recently issued regulations. Its only remaining recourse in this matter is to appeal to the U.S. Supreme Court, the highest court in the land.

The latest ruling affirms the district court's decision handed down in the case of *Loving et al, v. IRS*. In reaching its conclusion, the appeals court cited six primary reasons.

First, here's some background information. In 2010, the IRS launched a new program relating to tax return preparers, including certain testing and continuing education requirements. It relied on "ancient" history," going back to an obscure 1884 statute, as its authority to regulate representatives practicing before the Treasury Department. (The IRS is an agency of the Treasury Department.) Only certain tax return preparers, including CPAs, enrolled agents and tax attorneys, were exempted from the rules.

But three unlicensed tax return preparers spearheaded a challenge to the regulations. They argued that the new requirements would force practitioners to increase fees and could potentially cost them their businesses. In declaring injunctive relief for the tax return preparers, the District Court for the District of Columbia said that the IRS lacks the statutory authority to promulgate or enforce this new regulatory regime. Doing so would cause irreparable harm to unlicensed preparers, while the injunction serves public interest.

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3. Again, when referring to the 1884 statute, the court held that the “original plain language would not encompass tax return preparers.”
4. Taking the broad statutory framework into account, the new IRS rules would effectively “gut” the existing system for regulating tax return preparers.” The court noted that certain statutory provisions are already in place. The IRS should not have carte blanche to do what it wants.
5. The IRS’ interpretation exceeds the nature and scope of the authority granted to it. Congress did not intend to “grow such a large elephant in such a small mousehole.”
6. Until now, the IRS has never exerted any authority to regulate tax return preparers. In fact, the court quoted several IRS officials who stated that no such authority exists.

Despite the outcome in this case, don’t expect the IRS to wave the white flag. Undoubtedly, it will continue to pursue ways to improve the system and combat the growing problem of tax return preparer abuse. Finally, the IRS has not yet indicated whether or not it will appeal the latest decision.

Income Tax • IRS

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