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PRODUCT & SERVICE GUIDE

IRS appeals court ruling: Professionals and consumers agree with testing of tax preparers

This was the last thing this tax season needed: Uncertainty for tax professionals, other tax preparers and tax-paying Americans. AICPA, NSA, NAEA and other organizations want IRS testing program.

Isaac M. O'Bannon • Jan. 25, 2013

This was the last thing this late tax season needed: Uncertainty for tax professionals, other tax preparers and tax-paying Americans.

Last Friday, U.S. District Judge James Boasberg ruled that the Internal Revenue Service [cannot enforce its new rules for tax preparers](#). Six days later, on Thursday of this week, the IRS filed an appeal.

At stake is the tax agency's first attempt at making sure that tax preparers – those who prepare taxes for other people for a fee – have at least a minimum of tax knowledge and ethics. The program included testing, minimal training requirements, and a background check. The judge's ruling also included an injunction preventing those educational and testing requirements. Boasberg's decision centered on his belief that the IRS does not have the constitutional authority to impose such testing requirements.

The judge's initial decision was the result of a case filed by three tax preparers who filed suit last year with the help of a libertarian legal group, the Arlington, Va.-based

Institute for Justice.

The [American Institute of Certified Public Accountants](#), the [National Society of Accountants](#) and the [National Association of Enrolled Agents](#) all supported the creation of the IRS' new "Registered Tax Return Preparer" program and tax preparer testing requirements two years ago, and have expressed dismay at the court's initial ruling.

The general consensus of these professional organizations, and many consumer protection groups, is that the rules were designed to protect American taxpayers from unknowledgeable tax preparers, as well as those who might use improper tax strategies or tactics. The taxpayer is ultimately responsible for the accuracy of their tax return, even if their paid preparer made mistakes or intentionally used illegal tactics.

In a statement earlier this week, the Executive Vice President of the National Society of Accountants said, "We have long supported the registration of paid preparers and continuing education requirements so that preparers have the up-to-date knowledge needed to prepare complete and accurate tax returns for their clients... However, there are paid tax preparers out there who are not always qualified, and when these preparers do a poor job it hurts taxpayers and reflects poorly on the entire profession of paid tax preparers. Unfortunately, the court decision opens the door to the unscrupulous and the incompetent to the detriment of all."

The appeal asks Judge Boasberg to at least reconsider the injunction while the IRS makes its further judicial appeals, which it plans on filing within 30 days. The Justice Department would have to support such an appeal. That would put the decision right in the middle of the tax season.

In addition to the major national professional organizations being in favor of the IRS training requirements, the top retail tax preparation chains also support the plan.

H&R Block issued a statement saying that they, "Continue to support establishing uniform industry requirements" despite the court ruling.

"The court's ruling essentially eliminates key protections for millions of taxpayers," said Kathy Pickering, vice president of government affairs and executive director of The Tax Institute at H&R Block. "H&R Block continues to believe the IRS standards and additional oversight strengthen the industry's credibility, reliability and integrity ultimately protecting U.S. taxpayers."

The chief tax officer for Jackson Hewitt concurred. “We are certainly in support of all actions to reinforce and set quality preparer standards.” said Mark Steber.

For taxpayers who use a paid preparer, the most important advice is to ask the preparer about the credentials and training. If the person is a CPA, EA, member of the NSA (National Society of Accountants), an RTRP or a tax attorney, they have extensive education and annual educational requirements that ensure they are up-to-date on the latest tax laws.

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