



David A. Paterson
Governor

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
CONSUMER PROTECTION BOARD

Mindy A. Bockstein
Chairperson and Executive Director

August 27, 2009

Richard S. Goldstein
Office of Associate Chief Counsel
Internal Revenue Service
P.O.Box 7604, Ben Franklin Station
Washington, D.C. 20044

Submitted electronically via Notice.Comments@irsounsel.treas.gov

Re: Standards of Conduct for the Tax Return Preparer Community and Increased Taxpayer Compliance, (Notice 2009-60).

Dear Mr. Goldstein:

On behalf of the New York State Consumer Protection Board (CPB), I am pleased to submit comments on the Internal Revenue Service's (IRS) review of issues concerning tax return preparers. The CPB was established in 1970 pursuant to New York Executive Law Sections 552 and 553. It is the mission of the CPB to protect, educate, and represent consumers. The CPB is dedicated to policy development, consumer complaint assistance, and the creation of informational and educational outreach programs to benefit consumers across New York State. The CPB responds to consumer complaints and inquires, assisting on average 4,500 consumers each month.

In response to the surge of information and testimonials in recent years highlighting the practices of dishonest tax preparers, the CPB maintains an active role in mitigating consumer complaints against them, and educating consumers to beware of certain tactics employed by unscrupulous tax preparers. During the 2008 and 2009 tax seasons, the CPB partnered with the New York State Department of Taxation and Finance (NYS DTF) to advise consumers on steps to take prior to securing tax preparation services. This information included (1) encouraging qualified taxpayers to access Voluntary Income Tax Assistance (VITA) sites; (2) obtaining references from paid preparer's clients; (3) inquiring in advance regarding service fees; (4) avoiding preparers who guarantee a refund or base their fees on a percentage of the refund; (5) researching the preparer's credentials through the Better Business Bureau, State Bar Association or the State Board of Education, Office of Professions, Board of Public Accountancy; and, (6) inquiring about the information privacy or security practices followed by the tax preparer.



In New York, anyone, regardless of education, experience, training, or even criminal history, can call themselves a tax preparer. Due to a lack of established legal and professional standards, consumers continue to fall victim to unscrupulous tax preparers, who prepare fraudulent returns to create or inflate a consumer's refund, and often base their service fees on such inflated refunds. Subsequently, when the consumer is held liable for the fraudulent return, the tax preparer often cannot be found. Thus, the frequently unsuspecting consumer is left paying the original tax due, plus any penalties and interest accrued. Due to the lack of established legal and professional standards, the tax preparer is regularly held harmless under the terms of the tax preparer generated service contract and free to continue receiving compensation for such "services." In addition, tax preparers are often the conduit for enticing consumers into obtaining high-interest, quick refund anticipation loans (RALs). Unfortunately, the majority of aggrieved consumers who fall prey to such tax preparers are those who can least afford it, the low and middle-income taxpayer.

Accordingly, in 2008, Governor David A. Paterson signed into law the "Consumer Bill of Rights Regarding Tax Preparers," which requires tax preparers to provide consumers with a copy of the Bill of Rights prior to providing any tax preparation or RAL services. Then, this year, the Governor enacted a new law requiring all tax preparers, who are not otherwise regulated as licensed attorneys or accountants, to register with the NYSDTF, and, also calling upon the CPB to facilitate the dissemination of the "Consumer Bill of Rights Regarding Tax Preparers" and collaborating with the NYSDTF in responding to taxpayer complaints.

While these new measures demonstrate great strides in protecting taxpaying consumers in New York, more must be done nationally to provide a structure of minimum requirements for tax preparers. Thus, the CPB echoes the sentiments of the NYSDTF and asserts that the IRS should register all tax preparers, including CPAs and attorneys. Additionally, national minimum competency standards should be developed. All such preparer information, including education and disciplinary history, should be made publicly available to consumers via the Internet.

In addition, as part of such registration process, tax preparers should be subject to a code of ethics. A tax preparer code of ethics must reflect the fiduciary nature of the services being provided. The CPB recommends drawing from the American Bar Association Model Rules of Professional Responsibility and the American Institute of Certified Public Accountants Code of Professional Conduct, which guide the professional conduct of attorneys and accountants. Thus, the code should require tax preparers to provide competent service, exhibit professionalism, honesty, integrity and protect the privacy of their clients, whom entrust tax preparers with their most personal financial and private identifying information.

The CPB has found that the "Consumer Bill of Rights Regarding Tax Preparers" is an



excellent, quick resource and educational tool for consumers to be afforded in advance of any tax preparation engagement. Thus, the CPB recommends a Consumer Bill of Rights, advising consumers of their rights, be provided to all consumers throughout the nation in advance of any tax preparation engagement. Since many predatory tax preparers choose to establish their business operations in low-income and minority communities, the CPB encourages making any IRS consumer publications also available in other languages including Spanish.

Likewise, any regulatory efforts implemented should include a requirement that a tax preparer service contract be memorialized in a written instrument utilizing the same language in which the contract was negotiated. Consumers who are not proficient in English remain vulnerable prey to nefarious service providers who align themselves with consumers by speaking and negotiating a deal in their native tongue. Unfortunately, the service provider may then complete the deal with a written instrument in English for the consumer to sign. Not only is the written instrument difficult for this consumer to understand, but often it is inconsistent with the negotiated terms. The consumer is then left defenseless to retaliate against such bait-and-switch tactics. All consumers, regardless of their English reading capacity, must be afforded protection from predatory service providers.

Finally, the CPB buttresses the recommendation of the NYS DTF and encourages the IRS to embark on a national, multi-lingual, public education campaign advising consumers on the importance of dealing with a reputable tax preparer.

Thank you for your consideration of my comments.

Sincerely,



Mindy A. Bockstein,
Chairperson and Executive Director

MAB:pjo

