

September 13, 2010

Mr. David R. Williams  
Executive Lead, Return Preparer Implementation  
Internal Revenue Service  
1111 Constitution Avenue, Northwest  
Washington, DC 20224

**Re: NAEA Clarification on Preparer Tax Identification Number Requirements**

Dear David,

I write on behalf of the National Association of Enrolled Agents (NAEA), which represents the interests of some 46,000 enrolled agents, many of whom are concerned about the clarity of published requirements (in REG-134235-08) for return preparers to acquire/refresh a Preparer Tax Identification Number (PTIN) in order to prepare tax returns or claims for refund after December 31, 2010.

As we approach the imminent launch of the online PTIN function, many enrolled agents who are not solo practitioners are increasingly struggling with the deceptively simple question of who in his/her office needs a PTIN. The proposed regulations require all return preparers to have a PTIN and define a tax return preparer as "an 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."

The interpretive challenge comes from defining "substantially all." To that end, we offer several scenarios, some of which we are fairly confident of the answer, for your consideration:

Example 1:

Employer B provides bookkeeping and tax services to his clients. B hires Employee D to handle a sole proprietor's account. D enters transactions in bookkeeping software and uses her own discretion in classifying transactions. D confers with the client and Employer B on any questionable items. B periodically reviews general ledger and makes (or instructs D to make) appropriate changes to what he deems are misclassified entries. At year-end, after final review of general ledger by B, D electronically exports information from bookkeeping software and imports it into tax return software. B reviews the Schedule C for accuracy, makes necessary adjustments, then completes the tax return for which the Schedule C is a substantial portion.

Does Employee D need a PTIN? Would it matter if Employer B imported the information into the tax software?

Example 2:

Employee M works for Tax Preparation Firm R. Enrolled agent Q owns and manages R. Q gathers all information for a client's Form 1040 preparation, including Schedule C income and expense items. M takes information from Q's interview and enters information into tax software to complete the Form 1040 for the client. Q reviews the Form 1040 and signs it.

Does Employee M need a PTIN? Without respect to whether Employee M **needs** a PTIN, if M had a PTIN, could he sign the return?

Example 3:

Assume the same fact pattern as Example 2, but Employee M also reviews the return for accuracy and contacts client and asks additional questions, the answers of which are necessary to prepare the return (e.g., "Why did you categorize a photocopier purchase as an office expense, rather than depreciating it or using § 179?").

Does Employee M need a PTIN?

Example 4:

Employee S works for enrolled agent W. W, who has a PTIN, owns a small enrolled agent firm (Firm X) and employs several staff. Firm X annually sends clients a tax worksheet, which clients are encouraged to complete and return to Firm X with supporting documentation (e.g., Forms W-2, 1098, and 1099 as well as Schedules K-1). S uses client-prepared tax worksheet and contacts client as necessary to clarify issues (e.g., capital losses from stock transactions and gambling losses in excess of gambling winnings) to prepare client's tax return, W does not speak with client, but reviews and signs the return.

Does Employee S need a PTIN? Should enrolled agent W sign the return? If IRS questions the preparation of this return, will its treatment of W differ depending on whether S had a PTIN?

Example 5:

Assume the same fact pattern as Example 4, but Employee S consults with enrolled agent W while preparing client's tax return (e.g., if the client's uncle is sleeping on the couch for half the year, does that make him a dependent; does the sale of BRK.B in an IRA and purchase of the same stock in a private investment account run afoul of wash sale rules?) and W provides substantive guidance.

Does Employee S need a PTIN?

Example 6:

Employee F works for Registered Tax Return Preparer G, who has a PTIN. F answers the telephones, files, and provides payroll services to three small businesses, each employing fewer than ten people. As part of the payroll service, F prepares and files Forms 941. G does not review the individual Forms 941.

Does Employee F need a PTIN?

Example 7:

Employer J has a PTIN. J meets a client, conducts an interview and makes necessary decisions about client's filing status and number of dependents. J hands over the interview notes and supporting documents to Employee K to enter into tax software. Aside from a Schedule A, the return requires a Schedule D as the client sold \$1 million in inherited stocks. The client knows decedent's date of death (October 1, 2007) but does not have basis information for the stocks. J asks K to research basis for purposes of Schedule D and to enter all trades into Schedule D. AGI on the return is \$115,000 and the Schedule D calculation produces a \$250,000 loss. J reviews the completed return and signs it.

Does Employee K need a PTIN? Is the answer different if K enters trades into a spreadsheet and Employer J imports the spreadsheet into the tax software?

Example 8:

Employee Y uses client-provided tax worksheet to enter into tax software interest, dividends, and Social Security benefits from Forms 1099, as well as income and losses from several Schedules K-1. This data comprises all of the client's taxable and non-taxable income. The software Employer Z provides includes much of this information (e.g., bank accounts and brokerage accounts). Client is a long-time customer. Client's Schedules K-1 are prepared by other firms, not by Employer Z or her employees. Z reviews and signs the Form 1040.

Does Employee Y need a PTIN?

Ultimately, the ordinary circumstances requiring clarification revolve around a current Circular 230 practitioner (in our case, an enrolled agent, though we submit that any current practitioner ought to be treated equally) with a PTIN is closely supervising staff, who data enter or prepare a portion of a return and exercise little judgment (or judgment on a narrow range of issues). You'll note that these examples are fairly straightforward and do not involve obviously complex issues of tax. Any interpretation of complex tax issues must be

NAEA Clarification on Preparer Tax Identification Number Requirements

September 13, 2010

Page 4 of 4

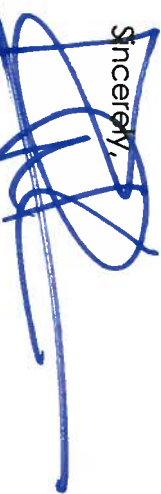
addressed by a preparer who has a PTIN and who has demonstrated the appropriate level of competency.

Before closing, I must raise one related issue. We understand that an organization representing another class of Circular 230 practitioners has suggested the agency provide a special carveout for its members only. We strongly oppose such a decision—as we have always opposed decisions that treat current Circular 230 practitioners differently—and have made our opinion known in private conversations at senior levels of the agency.

Thank you for the opportunity to suggest “real world” hypothetical situations. One of the happy concomitants of providing clarity to the return preparer community is that you provide standards for those within the agency who will be enforcing the new rules. Enrolled agents are concerned about consistency within the agency and guidance provided to preparers will also set a valuable framework for the agency’s own staff.

We look forward to working with you and other concerned preparer groups to meet our common goal—providing a clear, common sense regulatory framework for tax return preparers. Should you seek further clarification or explanation of our concerns, please contact me at 202-822-6232.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert Keir", written over the word "Sincerely,".

Robert Keir  
Senior Director, Government Relations