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CHARLES B. RANGEL, CHAIRMAN

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Fairfax, Virginia 22931
July 19, 2005

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★ HOT TOPICS

Mr. Chairman and other Members of the Subcommittee on Oversight

Alvin Brown and Associates is a tax law firm specializing in IRS issues and problems. I had a 25 year career in the Office of the IRS Chief Counsel. In my current tax practice I have tax return preparer clients ("Preparers") who have been or are presently being examined by the IRS. Some of my Preparer clients are under IRS criminal investigation. I have some first-hand insight into the problems of the Preparers, the reasons for the examination, and how the IRS conducts their investigations and brings fraud charges in most of the situations.

H.R. 3200. "America's Affordable Health Choices Act"

Health Care Reform

H.R. 7327 "Pension Relief and Technical Corrections"

"The American Recovery and Reinvestment Plan"

Request for Written Comments on Additional Miscellaneous Tariff and Duty Suspension Bills

H.R. 7060. "Renewable Energy and Job Creation Tax Act of 2008"

Tax Legislation in the 110th Congress

Information on Extending Unemployment Benefits

The most important fact that I can give this Committee from my personal experience is that the Preparer technical knowledge of the tax law and procedures is grossly inadequate. There are no statutory, educational, or experience requirements for any person to qualify as a "Tax Return Preparer." Some Preparers barely know the English language and their English communication skills are poor. Some do not have technical skills to work with software. These Preparers are not attorneys, accountants or enrolled agents. It is my personal opinion that the problems that Preparers get into with the IRS are caused by their lack of training and lack of knowledge which correspondingly results in the negligent preparation of U.S. tax returns. Preparers are not required to be licensed by the IRS. Any person who is not a minor can become a tax return preparer without any qualifications to engage in the business of tax return preparation, including incarcerated felons. There is no requirement for any tax return preparer to even warn a customer of their lack of knowledge or training. It follows that excessive error will occur in the preparation of tax returns by unqualified and inexperienced Preparers. As one might expect, incompetent, inexperienced and untrained Preparers have been the cause of negligently filed tax returns thereby causing a significant negative impact on tax revenue.

It is my opinion that basic educational/experience requirements will eliminate a large amount of tax return preparer negligence. There are standards for Enrolled Agents (those who qualify to represent taxpayers before the IRS). It makes sense to provide qualifying standards for those who wish to become professional tax return preparers.

I also believe that the Internal Revenue Service should be charged with the responsibility of formulating a licensing requirement in order to permit individuals to practice as professional Tax Return Preparers.

My personal experience in representing return Preparer clients is that their errors arise from negligence - not from fraud. The IRS, appropriately, is aggressive in investigating tax return preparers. I respect that effort and encourage that effort. But there is a very obvious difference between "negligence" and "fraud" - and is very easy for the IRS to spin negligence into fraud. In any investigation of a tax return preparer, the IRS will always ask the preparer's customer whether the errors on their tax return were caused by their (customer) input or the input of the tax return preparer. This question and those like it are quite intimidating to the customer. If the customer says: "Yes, that is my number or data," that person (in his own mind) is likely to think that he will be charged with "fraud" by the IRS Agent for providing erroneous data to the tax return preparer, for not having proper documentation, or because they think they might be audited. On the other hand, if the customer says that the number or data was provided by the Preparer, then the customer is not at risk. The Preparer will likely be charged with fraud by the IRS if there are multiple customers who are similarly intimidated by an IRS investigation who state that the data was sourced from the Preparer. It is my personal opinion that most of the tax return preparer investigations involve elements of IRS intimidation of the customers of the Preparer. Therefore, I believe that the IRS should not be able to bring a fraud charge against a tax return preparer if the charge is based solely upon the testimony of customers who are concerned about self-incrimination, the basis of their perceived "intimidation." The problem of IRS "intimidation" to customers who are not under investigation is very substantial. That intimidation results in the conversion of acts of negligence into tax fraud cases in many instances. The Preparer is at a disadvantage if the data received from the customer to the Preparer is communicated orally, because the source of the data used in the tax return cannot be traced.

In summary, I have the following observations and recommendations:

- A great deal of the distortions in tax determined by Preparers arises from negligence and lack of tax technical training and experience. The IRS can easily remedy the problem by licensing tax return preparers. In that licensing requirement, the IRS can create the necessary standards and qualifications for licensing. The cost of that effort and the monitoring of that effort can be covered by licensing fees. Since the IRS provides testing for Enrolled Agents, they can easily formulate appropriate educational/experience requirements for tax return preparers. A licensing requirement will bring with it professional standards and accountability. The reduction of negligence of return preparers will also reduce the amount of tax revenue lost by negligence.
- Fraud charges against tax return preparers should not be supported if based solely upon testimony from customers. The customer appears to have a conflict of interest when confronted by an IRS Examiner because they have in their own minds great concern about their own self-incrimination risk during the IRS interview - particularly in fraud cases. I have seen criminal charges brought with just five witnesses with significant conflict of interest pressures on the customers (e.g., fraud, loss of employment if a fraud charge is brought, and fear of audit). Although customer testimony is probative, that testimony should not be treated as conclusive evidence of fraud.
- In order to reduce the IRS "intimidation" factor by the IRS to customers of tax return preparers, it would be helpful to be able to identify the source of the data used in the tax returns at the time the tax returns are filed. This can be done with a few questions in the tax returns to establish if all of the deductions, exemptions and credits be documented. If there are any estimated numbers, a question can be asked about who provided the estimates. Attachments can be required by the IRS for explanations of undocumented data or estimates. Since the key question asked by an IRS Examiner to a Preparer customer is whether the data was provided by the preparer (to document a fraud issue), that issue can be eliminated by having that

★ SPECIAL FEATURES

President Signs SCHIP Bill Into Law
President Barack H. Obama signs H. R. 2, the Children's Health Insurance Program Reauthorization Act on February 4, 2009

The American Recovery and Reinvestment Act
Your Money at Work

Health Care Reform
Reforming Health Care is a Necessary Step in Rebuilding Our Economy

Internship Opportunities
Committee on Ways and Means Internship Opportunities

House Committee on Ways and Means

Fairfax, Virginia 22931

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I also believe that the Internal Revenue Service should be charged with the responsibility of formulating a licensing requirement in order to permit individuals to practice as professional Tax Return Preparers.

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Respectfully submitted,

Alvin S. Brown, Esq.
Tax Attorney

Testimony from Alvin Brown published by the House Ways & Means Committee of the U.S. Congress

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