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Bill Gives IRS Power Over Tax Prep, But Should It?

The annual tax filing nightmare is about to start, with millions of Americans struggling. About half of all people use tax preparers. Even members of Congress—who write the tax laws—overwhelmingly say they *cannot* prepare their own returns. It's no wonder given the complexity and the stakes. And its getting worse.

With Obamacare, even more people won't be able to prepare their own. Many lower and middle income people with previously simple returns may now need a pro. And make no mistake, the tax preparation business involves big bucks. The industry is dominated by big players like [H&R Block®](#) and [Liberty Tax Service](#). However, there are many mom and pop providers too.

The latter have the most to lose by efforts to regulate them. They will be more burdened by regulatory compliance and more impacted by compliance glitches or sanctions than the big boys. The battle over who can impose rules and conditions is not new and has already been to court. Two courts held that the IRS didn't have the power to do what it was doing. But now, a new federal bill would give the IRS broad regulatory control.

DONALD RUMSFELD

April 15, 2014

Internal Revenue Service
10th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Sir or Madame,

I have sent in our federal income tax and our gift tax returns for 2013. As in prior years, it is important for you to know that I have absolutely no idea whether our

tax returns and our tax payments are accurate. I say that despite the fact that I am a college graduate and I try hard to make sure our tax returns are accurate.

The tax code is so complex and the forms are so complicated, that I know that I cannot have any confidence that I know what is being requested and therefore I cannot and do not know, and I suspect a great many Americans cannot know, whether or not their tax returns are accurate. As in past years, I have spent more money than I wanted to spend to hire an accounting firm to prepare our tax returns and I believe they are well qualified.

This note is to alert you folks that I know that I do not know whether or not my tax returns are accurate, which is a sad commentary on governance in our nation's capital.

If you have questions, let me know and I will ask our accountants to be in touch with you to try to provide any additional information you may think you need.

I do hope that at some point in my lifetime, and I am now in my 80s, so there are not many years left, the U.S. government will simplify the U.S. tax code so that those citizens who sincerely want to pay what they should, are able to do it right, and know that they have done it right.

I should add that my wife of 59 years, also a college graduate, has signed our joint return, but she also knows that she does not have any idea whether or not our tax payments are accurate.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Wyden". The signature is fluid and cursive, with a long horizontal stroke at the end.

Senate Finance Committee Ranking Member, Ron Wyden, D Ore., and Senator Ben Cardin, D Md., proposed legislation to give the IRS explicit authority to regulate paid tax return preparers. They call the [bill](#) the "Taxpayer Protection and Preparer Proficiency Act of 2015." It is a direct response to the court case, *Loving v. IRS*, which held that the IRS had exceeded its authority with mandatory testing and continuing education of tax preparers.

The IRS lost again when a federal appeals court upheld the decision. Now, the IRS has a **voluntary** program for education and testing of preparers, and this list of [requirements for tax return preparers and frequently asked questions](#). But the IRS wants more. After it lost in court, the [IRS issued a statement on the court ruling](#). The IRS was forced to argue in court that its regulatory

power emanated from an 1884 law dealing with claims for horses killed during the Civil War.

The Wyden-Cardin bill would fix all that, requiring preparers to demonstrate competency to IRS satisfaction. But some say it is all about complexity. According to Sen Wyden, “It’s bad enough that taxpayers have to navigate their way through an overly complex tax code, but worse that many also unknowingly rely on fraudulent or incompetent tax preparers to help with their returns.” “This bill helps protect hard working taxpayers by ensuring that tax preparers are held to clear and enforceable standards.”

Former Defense Secretary Donald Rumsfeld last year fired off this letter. Although he and his wife both signed their tax returns under penalties of perjury, he issued a harsh confession: “*The tax code is so complex and the forms so complicated, that I know that I cannot have any confidence that I know what is being requested and therefore I cannot and do not know, and I suspect a great many Americans cannot know, whether or not their tax returns are accurate.*”

Cagily, Mr. Rumsfeld did not alter the penalty of perjury line on his Form 1040. He also did not write “without recourse” or “unlawful,” under this signature, which could have invalidated the tax return. Some altered tax returns are actually not “returns” for purposes of filing deadlines, the statute of limitations, and more.

Of course, Mr. Rumsfeld is right that most people cannot hope to understand a complex return, or often even a simple one. [Timothy Geithner](#) gave us the TurboTax defense. Financial institutions that popularized *robo-signing* of loan and foreclosure documents may have unwittingly lead to claims that “I didn’t read my tax return—I just signed it.” The situation seems worse today than ever before, because of the vast and unending complexity of our moribund tax system.

Electronic filing doesn’t help. There is a marked contrast between the mechanics of paper vs. electronic filing. With a traditional paper filing, the taxpayer had to *sign* the return before mailing, importing a certain amount of due diligence. Speaking of diligence, is the IRS the best organization to regulate prepares, or the worst?

Follow me on Forbes for tax alerts. You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.