

October 7, 2010

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20044

Re: Regulations Governing Practice Before the Internal Revenue Service; REG-138637-07; 75 Federal Register 51713 (August 23, 2010).

Dear Commissioner Shulman:

The American Bankers Association (ABA)¹ appreciates this opportunity to comment on the proposed regulations relating to “tax return preparers.” Under the proposal, the Internal Revenue Service (IRS) will establish a new “registered tax return preparer” designation for certain individuals authorized to practice before the IRS. Under this new regime, only attorneys, certified public accountants, enrolled agents and registered tax return preparers may prepare, or assist in the preparation of, all or substantially all of a tax return or claim for refund. In addition, under this proposal and other IRS rules, all registered tax return preparers, even those not signing any returns, must obtain a preparer tax identification number (PTIN), pass a competency examination, and complete qualifying continuing education credits. Although it will not affect banks when they prepare returns for trusts and estates as fiduciary,² the proposal will nonetheless affect bank employees who are involved in other tax preparation services.

ABA and its member institutions are concerned with the broad definition of the term “tax return preparer” which explicitly includes those individuals who assist in preparing “substantially all” of the return but do not sign the document. Particularly troubling is the fact that the term “substantially all” is not defined in the proposed amendments to Circular 230 and could needlessly affect a large swath of bank employees, especially in the trust department. For example, the term could be read to capture bank employees who make routine determinations about the tax treatment of corporate actions, such as reorganizations, redemptions and dividends. Other examples of individuals who may be inadvertently caught include those who make adjustments to tax costs, make decisions about applying the modified carryover basis rule for estates, and those who work with bank clients on

¹ The American Bankers Association represents banks of all sizes and charters and is the voice for the nation’s \$13 trillion banking industry and its 2 million employees. ABA’s extensive resources enhance the success of the nation’s banks and strengthen America’s economy and communities. Learn more at www.aba.com.

² Pursuant to proposal 31 CFR 10.7 (e), banks acting as fiduciary are considered the taxpayer and not subject to the new proposal.

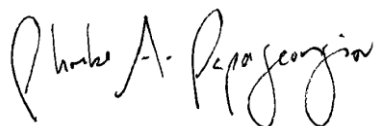
charitable giving decisions. Such an ambiguous meaning of the term will only lead to uneven implementation of the rule's requirements across banks and other paid tax return preparers.

To address this significant concern by the industry, the IRS announced that it “has under serious consideration extending [exemptions for testing and continuing education requirements] to a discrete category of people who engage in return preparation under the supervision of someone else -- for example, some employees who prepare all or substantially all of the return and work in certain professional firms under the supervision of one of the above individuals who signs the return.”³ ABA strongly urges the IRS to implement this consideration and to extend such an exemption to the well-regulated and examined employees of bank trust departments and trust companies. During bank examinations, the regulators evaluate the adequacy of bank employee training: “The examiner should analyze the type and depth of training offered to all trust personnel and evaluate the adequacy of the training program. Training may include in-house development programs, on-the-job training, correspondence courses, banking schools and seminars, training facilities of larger banks, and tuition aid programs.”⁴ By law, examinations of insured depository institutions must occur at least every eighteen months – and some large institutions have examiners on-site within the bank's premises throughout the year to examine their activities continuously.

In the proposal, the IRS requests comments on whether there should be an exemption from examination requirements for those who solely prepare tax returns other than Form 1040. Most trust bank employees do not work on Form 1040, but instead work such forms as 1041, 990, 706, and 5500. Therefore, ABA strongly urges the IRS to follow through with this reasonable alternative for individuals who already work in a well-regulated and examined environment. If the IRS decides not to grant such an exemption, we urge the IRS to clarify that despite the fact that competency examinations are not available for non-1040 series, tax return preparers working on fiduciary accounts may continue to sign or assist in the preparation of these documents.

ABA hopes that the IRS will recognize the unique position of bank trust departments that prepare and assist in the preparation of returns but do not function as a tax return preparer in the general sense of the word. If you have any questions about the comments made in this letter, please do not hesitate to call or write the undersigned.

Sincerely,



Phoebe A. Papageorgiou
Senior Counsel

³ IRS News Release (September 28,2010), available at <http://www.irs.gov/newsroom/article/0,,id=228266,00.html>.

⁴ FDIC Trust Examination Manual, Section 1.D.1, available at http://www.fdic.gov/regulations/examinations/trustmanual/section_1/section_i.html.