AMERICAN BAR ASSOCIATION

SECTION OF TAXATION

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association urges Congress to amend 31 U.S.C. § 330(a) and (b) to include within the scope of those provisions non-attorney "tax return preparers," as that term is defined by 26 U.S.C. § 7701(a)(36) and Treasury Department regulations promulgated thereunder.

FURTHER RESOLVED, That the American Bar Association urges Congress to amend 31 U.S.C. § 330(d) to clarify that the Treasury Department has the authority to regulate persons who advise taxpayers with respect to the reporting of items on Federal tax returns, provided that the scope of any such regulation should not exceed the scope set forth in Treasury Department Circular 230 as published on June 12, 2014.

REPORT

I. Introduction

For 130 years, the Treasury Department has been authorized under 31 U.S.C. § 330 to regulate representatives of persons who practice before it. While the authorizing statute has been amended on several occasions, most recently in 2004,[1] it remains largely unchanged since first enacted in 1884 to address unscrupulous practices arising in the wake of the Civil War.

The conduct of unscrupulous unregulated tax return preparers imposes significant costs on society, including by contributing to the "tax gap." The clients of such preparers often find themselves ensnared in Internal Revenue Service examinations and collection proceedings, and those clients and the Internal Revenue Service are forced to expend significant resources to resolve those issues. Meanwhile, lawyers and certified public accountants ("CPAs") who prepare tax returns operate within the confines of applicable professional standards (e.g., bar rules for lawyers and similar applicable rules for CPAs) and also are regulated under Circular 230 discussed below.

Regulations promulgated under 31 U.S.C. § 330 are set forth in Treasury Department Circular 230 ("Circular 230").[2] Those regulations have been amended numerous times in recent years to address the evolving and expanding role of paid tax advisors and to vest oversight of those advisors' compliance with Circular 230 in the Internal Revenue Service's Office of Professional Responsibility ("OPR"). As most recently modified, section 10.2(a)(4) of Circular 230 defines "practice before the Internal Revenue Service" to encompass:

> [A]ll matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under the laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service; rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion; and representing a client at conferences, hearings, and meetings.

[1] American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418, §§ 820, 822 (authorizing the imposition of monetary sanctions under revised 31 U.S.C. § 330(b) and adding 31 U.S.C. § 330(d) to provide that nothing in the statute shall be construed to limit the authority of the Treasury Department to regulate the issuance of written tax advice with respect to transactions that have the potential for tax avoidance or abuse).

[2] Circular 230 was first published on February 15, 1921 through Treasury Decision 38773. The most recent update, dated June 12, 2014, is available at: http://www.irs.gov/pub/irs-pdf/pcir230.pdf.

Only certain types of persons are permitted to "practice before the Internal Revenue Service." Specifically, section 10.3 of Circular 230 authorizes attorneys, CPAs, and certain other categories of "practitioners" to "practice before the Internal Revenue Service."[3]

Recent judicial decisions have limited the Treasury Department's authority to regulate the conduct of paid tax advisors, including tax return preparers, under 31 U.S.C. § 330. As discussed further below, those decisions interpret the term "practice before the Internal Revenue Service" more narrowly than such term is defined in Circular 230, and in so doing, those decisions have the effect of limiting both the types of practitioners and the scope of conduct that OPR previously could regulate under Circular 230. By urging Congress to enact legislation to ensure that the Treasury Department has authority to regulate all persons who, for compensation, advise or represent taxpayers with respect to any matters arising under the Internal Revenue Code, including the reporting of items on Federal tax returns, the Association would (1) promote competence, ethical conduct and professionalism, (2) protect our members and the public from unscrupulous unregulated tax return preparers, and (3) promote accountability through oversight of paid tax advisors by OPR.

II. Recent Judicial Decisions

On February 11, 2014, the U.S. Court of Appeals for the D.C. Circuit held in *Loving v. Internal Revenue Service*, 742 F.3d 1013 (D.C. Cir. 2014) that amendments made to Circular 230 in 2011 to expand its scope and cover all paid tax return preparers exceeded the statutory authority provided to the Treasury Department in 31 U.S.C. § 330. The Court of Appeals affirmed the District Court's prior order enjoining the Internal Revenue Service from implementing a broad program to test the initial competence of hundreds of thousands of previously unregulated paid tax return preparers and to subject those persons to minimum continuing education requirements. The Court based its decision on six separate factors, including a finding that paid tax return preparers are not "representatives" of persons before the Treasury Department within the meaning of 31 U.S.C. § 330 and that "practice" before the Treasury Department is limited to adversarial or other proceedings where a taxpayer designates a representative to act on his or her behalf, and does not include the submission of tax returns or other documents to the Internal Revenue Service.

Six months after the D.C. Circuit's decision in *Loving*, the U.S. District Court for the District of Columbia in *Ridgely v. Lew*, 2014 U.S. Dist. LEXIS 96447 (D.D.C. July 16, 2014), held that regulations set forth in section 10.27 of Circular 230 limiting certain contingent fee arrangements that can be charged by tax practitioners also exceeded the statutory authority of 31

[3] Enrolled agents, enrolled actuaries and enrolled retirement plan agents, which are specified categories of individuals who apply to the Internal Revenue Service for the right to represent taxpayers, also are subject to regulation under Circular 230. To be qualified under those rules, applicants must satisfactorily complete a written examination, or otherwise demonstrate proficiency through years of technical experience as an Internal Revenue Service employee, and once accepted, these individuals are required to complete a minimum number of hours of continuing education credits, including a minimum number of hours of ethics or professional conduct study credits.

U.S.C. § 330. The plaintiff in *Ridgely* was a CPA who was admittedly a "representative" of persons before the Treasury Department in other contexts. The District Court held, however, that this did not provide a basis for subjecting the plaintiff's fee practices to regulation under Circular 230 when preparing "ordinary" refund claims because that activity, standing alone, did not constitute "practice" before the Treasury Department.[4] Other cases are pending in courts around the country that rely on the D.C. Circuit's decision in *Loving* to further challenge the Treasury Department's authority to regulate paid tax advisors.[5]

The *Loving* Court noted that its decision should not be construed as a commentary on the need to regulate paid return preparers. "It might be that allowing the IRS to regulate tax-return preparers more stringently would be wise as a policy matter. But that is a decision for Congress and the President to make if they wish by enacting new legislation."[6]

---

[4] The *Ridgely* court explained that an "ordinary refund claim" is a tax refund claim that is filed after a taxpayer has filed his original tax return but before the Internal Revenue Service has initiated an audit of the return.

[5] For example, in, *Sexton v. Hawkins*, a disbarred lawyer is seeking to enjoin OPR from investigating his ability to prepare and file tax returns, and to enjoin the Internal Revenue Service from limiting his access to the electronic tax return filing system. After being disbarred in South Carolina following his conviction in federal court for mail fraud and money laundering, OPR suspended his right to practice before the Internal Revenue Service. The District Court recently denied OPR's motion to dismiss, finding that the court had jurisdiction to hear the claim and enjoining OPR from enforcing its document requests during the pendency of the action. *Sexton v. Hawkins*, 2014 U.S. Dist. LEXIS 153766 (D. Nev. Oct. 30, 2014). *See also, Davis v. Internal Revenue Service*, Case No. 14-cv-0261 (N.D. Ohio) (challenging the Internal Revenue Service's authority to limit access to its electronic tax return filing system). Separately, in *American Institute of Certified Public Accountants v. Internal Revenue Service*, 2014 U.S. Dist. LEXIS 157723 (D.D.C. Oct. 27, 2014), the District Court dismissed on jurisdictional standing grounds a challenge brought by the national association representing CPAs to the Internal Revenue Service's authority to promulgate a voluntary preparer compliance program through Rev. Proc. 2014-42, 2014-29 I.R.B. 192.

[6] Legislation was introduced in the 113th Congress providing for broader regulation of paid tax return preparers, but was not enacted. H.R. 1570, *Taxpayer Protection and Preparer Fraud Prevention Act of 2013*, 113th Cong. (2013); H.R. 4463, *Tax Refund Protection Act of 2014*, 113th Cong. (2013); H.R. 4470, *The Tax Return Preparer Accountability Act of 2014*, 113th Cong. (2013). The Obama Administration has also supported legislation authorizing the Treasury Department and Internal Revenue Service to regulate paid tax return preparers. *See General Explanation of the Administration's Fiscal Year 2015 Revenue Proposals*, at 244 (March 2014). Similar legislation authorizing the regulation of paid tax return preparers has been introduced in prior Congresses but has also never been enacted. *See, e.g.*, S. 802, *Low Income Taxpayer Protection Act of 2001*, 107 Cong. (2001); H.R. 1528, *Tax Administration Good Government Act*, 108th Cong. (2004); *Telephone Excise Tax Repeal Act of 2005*, 109th Cong. (2005); *Taxpayer Protection and Assistance Act of 2007*, 100th Cong. (2007); H.R. 5716, *Taxpayer Bill of Rights Act of 2008*, 100th Cong. (2008).

III. Broad Consequences of the Recent Judicial Decisions

In *Loving* and *Ridgely*, the courts interpreted the statutory reference to "practice of representatives of persons before the Department of the Treasury" in 31 U.S.C. § 330(a). The rationale in those cases may be extended to support the conclusion that any work done by a paid tax professional that does not involve direct interaction with the Internal Revenue Service in an adversarial or other proceeding in which the professional is authorized to bind the taxpayer is not subject to regulation under 31 U.S.C. § 330.[7] This interpretation is noteworthy given that in 2004 Congress amended 31 U.S.C. § 330 to clarify that the statute does *not* limit the authority of the Treasury Department to impose practice standards applicable to certain written tax advice.[8] Accordingly, without amendment, 31 U.S.C. § 330, as construed by the Court of Appeals in *Loving*, authorizes the Treasury Department to regulate certain written tax advice that is at least one step removed from the preparation and filing of a tax return, but does not authorize the regulation of persons who prepare, sign and file hundreds or thousands of tax returns with multiple millions of dollars in tax consequences. *Ridgely* goes one step further in calling into question the Treasury Department's authority to regulate a broader range of conduct by paid tax advisors that does not necessarily involve direct interaction with the Internal Revenue Service in a proceeding in which the taxpayer can bind the taxpayer. These include, for example, portions of the general due diligence rule in Circular 230 section 10.22, rules governing the submission of tax returns and other documents to the Internal Revenue Service in Circular 230 section 10.34, and rules governing certain written tax advice in Circular 230 section 10.37.

As the scope and complexity of the tax law continues to grow, taxpayers have increasingly come to rely on assistance from paid tax advisors in meeting their tax obligations. This has increased the need for those tax advisors to maintain a high level of competence and, at the same time, increased the need for oversight to ensure that minimum competence levels are maintained and that appropriate steps are taken to address incompetent and unscrupulous conduct. The Internal Revenue Code includes a number of civil and criminal penalty provisions that allow indirect regulation of paid tax advisors, but only through resource-intensive, after-the-fact proceedings.[9] Recent studies have found that these provisions have not been adequate to

---

[7] A broader range of conduct is arguably subject to regulation under 31 U.S.C. § 330(b) if it rises to the level of "incompetence" or "disreputable" conduct. Although that subsection was not at issue in *Loving*, it uses terms similar to those that the D.C. Circuit interpreted narrowly in that case, *i.e.*, "practice before the [Treasury] Department" and "representative." 31 U.S.C. § 330(b).

[8] American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418, § 820. Notably, the "covered opinion" rules in prior Circular 230 section 10.35 that the amendment to 31 U.S.C. § 330 was designed to cover have recently been repealed based on a determination by the Treasury Department and the Internal Revenue Service that the burden they imposed outweighed the benefit they provided in terms of improved compliance with the tax law. T.D. 9669, 79 Fed. Reg. 33685 (June 12, 2014).

[9] These include the preparer penalty provisions in 26 U.S.C. §§ 6694 and 6695, the penalty under 26 U.S.C. § 6700 for promoting abusive tax shelters, the penalty under 26 U.S.C. § 6701 for aiding and abetting an understatement of tax and the civil injunction provisions in 26 U.S.C. §§ 7407 and 7408. *See also* 26 U.S.C. § 7201 (criminal sanction for attempting to evade or defeat tax), § 7206(2) (criminal sanction for willful aid or assistance in making false or

ensure that paid tax advisors provide the necessary level of assistance to their clients in complying with their obligations under the tax law.[10]

Despite the complexity of the Internal Revenue Code and the Treasury Regulations, unregulated return preparers are not subject to minimum educational or other competency requirements. In contrast, attorneys and CPAs must complete prescribed courses of study and then pass state licensing exams to practice their professions. Enrolled agents who do not have prior experience working for the Internal Revenue Service must pass a written examination to demonstrate their knowledge of tax law and procedure. In addition, attorneys and CPAs are subject to ethical requirements and, in most jurisdictions, continuing professional education requirements.[11]

The proposed resolution is intended to benefit consumers and the overall tax system. Given the pervasive and growing role of the tax law in a wide range of socio-economic activities, the need for some level of affirmative practice standards applicable to paid tax advisors cannot be disputed. Yet, under *Loving*, the vast majority of paid tax return preparers are subject to no such standards. Because more than half of all taxpayers use paid return preparers who are excluded from regulation under Circular 230 as a result of the *Loving* decision,[12] a substantial portion of the nearly 150 million tax returns filed each year are prepared by persons who are not subject to any generally applicable standards of competency.[13] Beyond obvious examples of fraud and incompetence, the absence of any generally applicable competency standards is a driving factor in negligent or unintentional noncompliance with the tax law. Not only does this noncompliance result in lost tax revenue, it also imposes significant risks on taxpayers and the Internal Revenue Service in dealing with erroneous tax filings. In light of the complexity of the

---

fraudulent submissions to the IRS), § 7212 (criminal sanction for attempting to interfere with the administration of the tax law), and § 7216 (improper disclosure of taxpayer return information).

[10] U.S. Government Accountability Office, *Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors*, GAO-14-467T (April 8, 2014) (the "April 2014 GAO Report"). The April 2014 GAO Report followed up on and confirmed the findings of a similar report issued in 2006. U.S. Government Accountability Office, *Paid Tax Return Preparers: In a Limited Study, Chain Preparers Made Serious Errors*, GAO-06-563T (April 4, 2006).

[11] As noted above, enrolled agents, enrolled actuaries and enrolled retirement plan agents are subject to the ethical requirements of Circular 230 and are required to complete a minimum number of hours of continuing education credits, including a minimum number of hours of ethics or professional conduct study credits.

[12] Introduction to the April 2014 GAO Report, *supra*.

[13] Recognizing the importance of the issue and to fill the regulatory vacuum, four states have implemented their own regimes for regulating otherwise unlicensed paid return preparers. Cal. Code Ann. §§ 22250 et seq.; Md. Code Ann. §§ 10-824 et seq.; NY CLS Tax §§ 32 et seq.; Or. Rev. Stat. §§ 673.457 et seq. While paid return preparers in these states are subject to regulation and oversight, their reach is limited to state tax matters and would only cover issues pertaining to federal tax returns if there happened to be substantive overlap between applicable state and federal tax regimes.

tax law, there is a continued and growing demand for paid tax advisors. Maintaining minimum competence and practice standards will strengthen the market for tax advisors while at the same time protecting consumers and safeguarding the tax system.

It is important to note that Circular 230 regulates all professionals practicing before the Internal Revenue Service, including lawyers. The Association has a long history of opposing efforts by federal agencies to establish ethical standards governing federal agency practice, arguing that primary regulation and oversight of the legal profession should be vested in the highest court of the state in which the lawyer is licensed. However, the Association has long recognized limited exceptions to this view for regulation by the specified agencies, including the Internal Revenue Service. For example, at the 1982 Annual Meeting, the House of Delegates adopted a resolution that provides, in part, that "Except as existing legislation expressly provides, no federal agency shall adopt standards of practice to govern the professional conduct of attorneys who represent clients subject to the administrative procedures of or regulation by that federal agency . . ."[14] The report that accompanied that Resolution explained that existing legislation authorized both the Internal Revenue Service and the Patent Office to regulate attorneys and other practitioners appearing before those agencies, and suggested that because (i) practice before those agencies is conducted by many practitioners who are not attorneys, and (ii) the bars of those agencies did not appear dissatisfied with the current state of affairs, it would not be prudent to advocate for change of those exceptions.[15] Given that the 1982 and similar policies recognized an exception for regulation by the Internal Revenue Service, and given that the proposed Resolution is limited to regulation of those practicing before the Internal Revenue Service, the proposed Resolution is consistent with the policies previously adopted by the Association.

IV. Conclusion

To improve compliance with tax law and reduce the risks imposed on taxpayers and the Internal Revenue Service by erroneous tax returns, and to ensure that all paid return preparers demonstrate satisfaction of minimum competency requirements and will be subject to oversight by OPR, this resolution urges Congress to clarify the authority of the Treasury Department to regulate any person who, for compensation, advises or represents taxpayers with respect to any matters arising under the Internal Revenue Code, including the reporting of items on Federal tax returns. Specifically, this resolution urges Congress to amend 31 U.S.C. §§ 330(a) and (b) to allow the Treasury Department to regulate non-attorney paid "tax return preparers," as that term is defined by 26 U.S.C. § 7701(a)(36) and the regulations thereunder. Moreover, because the rationale of the recent judicial decisions discussed above may be extended to support the conclusion that any work done by a paid tax professional that does not involve direct interaction with the Internal Revenue Service in an adversarial or other proceeding in which the professional is authorized to bind the taxpayer is not subject to regulation under 31 U.S.C. § 330, this

[14] 107 Annu. Rep. A.B.A. 603, 669 (1982).

[15] Similarly, in October 2009 the Board of Governors adopted a resolution opposing provisions of the Consumer Financial Protection Act that would regulate lawyers engaged in the practice of law "except to the extent that lawyers are currently subject to regulation by a federal agency under existing law."

resolution also urges Congress to amend 31 U.S.C. § 330(d) to clarify that the Treasury Department has the authority to regulate practice before the Internal Revenue Service as set forth in Circular 230 as published on June 12, 2014.

Under current law, regulations generally applicable to civil preparer penalties appropriately limit the definition of persons subject to those penalties to exclude persons who are not compensated for their work in assisting taxpayers in preparing returns,[16] or whose work is otherwise too attenuated from the filing of a tax return or other submission to the Internal Revenue Service.[17] In addition, the regulations at issue in *Loving* did not impose any application requirements, examinations, or continuing education requirements on lawyers or other regulated professionals because the bar rules or other applicable professional standards already operate to ensure that lawyers and other regulated professionals meet the minimum competency requirements that the regulations sought to impose on the otherwise non-regulated paid return preparers. Those limitations should continue to apply and we do not support any expansion of the scope of Circular 230 beyond its present form.

Respectfully submitted,

Armando Gomez, Chair
Section of Taxation
February 2015

[16] Treas. Reg. § 301.7701-15(f).

[17] Treas. Reg. § 301.7701-15(a) (requiring that a person prepare "all or a substantial portion of" a tax return or claim for refund in order to be considered a "tax return preparer").

104

GENERAL INFORMATION FORM

Submitting Entity: ABA Section of Taxation

Submitted By: Armando Gomez, Chair

1. Summary of Resolution(s).

The Resolution urges Congress to amend 31 U.S.C. § 330(a) and (b) to include within the scope of those provisions non-attorney "tax return preparers," as that term is defined by 26 U.S.C. § 7701(a)(36) and Treasury Department regulations promulgated thereunder. The Resolution also urges Congress to amend 31 U.S.C. § 330(d) to clarify that the Treasury Department has the authority to regulate persons who advise taxpayers with respect to the reporting of items on Federal tax returns, provided that the scope of any such regulation should not exceed the scope set forth in Treasury Department Circular 230 as published on June 12, 2014. These changes would reverse the effect of recent judicial decisions limiting Treasury's authority to regulate the conduct of paid tax advisors, including tax return preparers, to protect consumers and safeguard the tax system.

2. Approval by Submitting Entity.

This Resolution was discussed by the Council of the ABA Section of Taxation at a regularly scheduled meeting in Denver, Colorado on September 18, 2014, and was formally approved by the Council of the ABA Section of Taxation on November 13, 2014 through a vote conducted electronically in compliance with section 4.10 of the Section's Bylaws. The Resolution will be presented for approval by the members of the ABA Section of Taxation during the plenary session of its Mid-Year Meeting in Houston, Texas on January 31, 2015.

3. Has this or a similar resolution been submitted to the House of Board recently?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

There are no Association policies that address the scope of the Treasury Department's authority to regulate practice before the Internal Revenue Service in general, or with respect to paid tax return preparers. Through the blanket authority process, the Section of Taxation has supported efforts to regulate paid tax return preparers, including through testimony before the Internal Revenue Service,[1] and in a comment letter on proposed tax reform legislation.[2]

[1] Statement on behalf of the American Bar Association Section of Taxation before the IRS Forum on Preparer Regulations (July 30, 2009), *available at*: http://www.americanbar.org/content/dam/aba/migrated/tax/pubpolicy/2009/090724irspubforumontaxreturnpreparerreview.authcheckdam.pdf.

Separately, the Standing Committee on Ethics and Professional Responsibility has issued formal opinions addressing the ethical relationship between the Internal Revenue Service and lawyers practicing before it,[3] ethical considerations for lawyers issuing tax shelter opinions,[4] and standards governing the position a lawyer may advise a client to take on a tax return.[5] While limited to standards applicable to lawyers, the guidance expressed in those opinions has influenced the standards reflected in Treasury Department Circular 230. The proposed Resolution would not affect the guidance expressed in these formal opinions.

The Association has adopted policies in the past, including a resolution adopted in 1982 opposing efforts by federal agencies to adopt standards of practice to govern the professional conduct of attorneys who represent clients subject to the administrative procedures of or regulation by that federal agency, and a resolution adopted in 2009 opposing provisions of the Consumer Financial Protection Agency Act that would regulate lawyers engaged in the practice of law. Those policies, however, expressly excepted situations where lawyers were already subject to regulation by a federal agency, such as lawyers subject to regulation by the Internal Revenue Service under Circular 230. Accordingly, the proposed Resolution does not conflict with these pre-existing Association policies.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

Not applicable.

6. Status of Legislation.

Legislation has been introduced in the 113th Congress providing for broader regulation of paid tax return preparers, but has not been enacted.[6] The Obama Administration has also supported legislation authorizing the Treasury Department and Internal Revenue Service to regulate paid

---

[2] Comments on Summary of Staff Discussion Draft on Reforming Tax Administration (June 25, 2014), *available at*: http://www.americanbar.org/content/dam/aba/administrative/taxation/policy/062514comments.authcheckdam.pdf.

[3] Formal Opinion 314 (April 27, 1965).

[4] Formal Opinion 346 (January 29, 1982).

[5] Formal Opinion 85-352 (July 7, 1985).

[6] H.R. 1570, *Taxpayer Protection and Preparer Fraud Prevention Act of 2013*, 113th Cong. (2013); H.R. 4463, *Tax Refund Protection Act of 2014*, 113th Cong. (2013); H.R. 4470, *The Tax Return Preparer Accountability Act of 2014*, 113th Cong. (2013).

tax return preparers.[7] Similar legislation authorizing the regulation of paid tax return preparers has been introduced in prior Congresses but has also never been enacted. [8]

7. Brief explanation regarding plans for implementation of the Resolution, if adopted by the House of Delegates.

If the Resolution is adopted, the Section of Taxation would be well positioned to advocate on the Association's position in support of legislation to regulate paid tax return preparers. The Section of Taxation would work with the Governmental Affairs Office to urge Congress to act quickly to make the recommended legislative changes.

8. Cost to the Association.

Passage of the policy will incur no direct cost to the Association. Some staff time from the Section of Taxation and the Governmental Affairs Office would be required to support advocacy of this policy.

9. Disclosure of Interest.

None known at this time.

10. Referrals.

The Section of Taxation has referred the proposed Resolution to all interested parties, including the Section of Administrative Law and Regulatory Practice, the Section of Business Law, the Section of Family Law, the Section of International Law, the Section of Real Property, Trust and Estate Law, the Solo, Small Firm and General Practice Division, the Center for Professional Responsibility and the Governmental Affairs Office, among others. The proposed Resolution will also be referred to the Section of State and Local Government Law.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address.)

Armando Gomez
Chair, Section of Taxation
c/o Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
Office: (202) 371-7868
armando.gomez@skadden.com

---

[7] *See General Explanation of the Administration's Fiscal Year 2015 Revenue Proposals,* at 244 (March 2014).

[8] *See, e.g*., S. 802, *Low Income Taxpayer Protection Act of 2001*, 107 Cong. (2001); H.R. 1528, *Tax Administration Good Government Act*, 108th Cong. (2004); *Telephone Excise Tax Repeal Act of 2005*, 109th Cong. (2005); *Taxpayer Protection and Assistance Act of 2007*, 100th Cong. (2007); H.R. 5716, *Taxpayer Bill of Rights Act of 2008*, 100th Cong. (2008).

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number and e-mail address.)

Susan P. Serota
Delegate, Section of Taxation
c/o Pillsbury Winthrop Shaw Pittman LLP
1540 Broadway
New York, NY 10036
Office: (212) 858-1125
Mobile: (917) 359-9776
susan.serota@pillsburylaw.com

104

EXECUTIVE SUMMARY

1. Summary of the Resolution

The Resolution urges Congress to amend 31 U.S.C. § 330(a) and (b) to include within the scope of those provisions non-attorney "tax return preparers," as that term is defined by 26 U.S.C. § 7701(a)(36) and Treasury Department regulations promulgated thereunder. The Resolution also urges Congress to amend 31 U.S.C. § 330(d) to clarify that the Treasury Department has the authority to regulate persons who advise taxpayers with respect to the reporting of items on Federal tax returns, provided that the scope of any such regulation should not exceed the scope set forth in Treasury Department Circular 230 as published on June 12, 2014. These changes would reverse the effect of recent judicial decisions limiting Treasury's authority to regulate the conduct of paid tax advisors, including tax return preparers, to protect consumers and safeguard the tax system.

2. Summary of the Issue that the Resolution Addresses

In 2011 the Treasury Department promulgated regulations under 31 U.S.C. § 330 to regulate paid tax return preparers. The Court of Appeals for the D.C. Circuit held in *Loving v. Internal Revenue Service*, 742 F.3d 1013 (D.C. Cir. 2014), that those regulations exceeded the Treasury Department's authority. More recently, in *Ridgely v. Lew*, 2014 U.S. Dist. LEXIS 96447 (D.D.C. July 16, 2014), the U.S. District Court for the District of Columbia invalidated other regulations promulgated by the Treasury Department under 31 U.S.C. § 330 that limited certain contingent fee arrangements charged by tax practitioners. These and other cases have limited the Treasury Department's authority to regulate the conduct of persons who, for compensation, advise or represent taxpayers with respect to any matters arising under the Internal Revenue Code, including the reporting of items on Federal tax returns.

3. Explanation of how the Resolution Will Address the Issue

By urging Congress to amend 31 U.S.C. § 330 to allow the Treasury Department to regulate paid tax return preparers, as that term is defined by 26 U.S.C. § 7701(a)(36) and the regulations thereunder, and provide a clear affirmative grant of authority of the Treasury Department to regulate a broader range of conduct engaged in by paid tax advisors, including applicable due diligence standards, fee arrangements and other activities of paid tax advisors that do not involve direct interaction with the Internal Revenue Service in an adversarial proceeding but nonetheless have a significant impact on the public fisc and on taxpayers' compliance with their obligations under the tax law, the proposed Resolution would directly address the concerns presented in *Loving*. By approving this Resolution, the Association would (1) promote competence, ethical conduct and professionalism, (2) protect our members and the public from unscrupulous unregulated tax return preparers, and (3) promote accountability through oversight of paid tax advisors by the Internal Revenue Service's Office of Professional Responsibility.

4. Summary of Any Minority Views of Opposition Which Have Been Identified

No minority views have been identified in opposition to the proposed Resolution.