TESTIMONY

OF

KENNETH W. GIDEON

ON BEHALF

OF THE

AMERICAN BAR ASSOCIATION
SECTION OF TAXATION

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

HOUSE WAYS AND MEANS COMMITTEE

JULY 20, 2005
Good afternoon. My name is Kenneth Gideon. I appear before you today in my capacity as Chair of the American Bar Association Section of Taxation. This testimony is presented on behalf of the Section of Taxation. It has not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, it should not be construed as representing the policy of the Association.

The Section of Taxation appreciates the opportunity to appear before the Subcommittee on Oversight (the “Subcommittee”) today to discuss proposals for ensuring that tax return preparers are both ethical and competent. Because tax return preparers play an important role in the efficient and effective administration of the tax laws, these proposals complement the efforts of the Internal Revenue Service (the “Service”) to regulate tax professionals and increase the level of taxpayer compliance.

American Bar Association Section of Taxation

The Section of Taxation is comprised of more than 18,000 tax lawyers. Our members include attorneys who work in law firms, corporations and other business entities, government, non-profit organizations, academia, accounting firms and other multidisciplinary organizations. As the country's largest and broadest-based professional organization of tax lawyers, one of our primary goals is to make the tax system fairer, simpler and easier to administer.

Our members provide advice on virtually every substantive and procedural area of the tax laws, and interact regularly with the Internal Revenue Service and other government agencies and offices responsible for administering and enforcing such laws.
Many of our members have served in staff and executive-level positions at the Service, the Treasury Department, the Tax Division of the Department of Justice, and the Congressional tax-writing committees.

The Need for Tax Return Preparer Registration

Today, more taxpayers than ever pay a third party to prepare their individual income tax returns. Paid preparers advise taxpayers on issues for which guidance is unclear. They explain record-keeping and other requirements. Many taxpayers use them to navigate their way through overlapping or recently changed provisions. The complexity of many provisions, such as the credits for earned income, dependent care, and education, raises particular needs for preparer assistance.

Many paid preparers are subject to no regulation by the Service or by state licensing authorities. Their situation contrasts with that of attorneys, CPAs, and enrolled agents (“Regulated Professionals”), who are subject to oversight through Circular 230 rules and the Service’s Office of Professional Responsibility. Attorneys and CPAs must pass licensing examinations to practice their professions. Enrolled agents who do not have prior experience working for the Service pass a written examination that tests their knowledge of tax law and procedure. Regulated Professionals are subject to continuing professional education requirements and ethical obligations. By contrast, paid preparers are subject only to the Internal Revenue Code’s preparer penalties. Under current circumstances, it can be difficult for the Service to locate and review all returns prepared
by a preparer when instances of willful or reckless conduct or intentional disregard of rules and regulations are detected.

In most states, individuals who are not Regulated Professionals can advise taxpayers and prepare tax returns. Neither the Internal Revenue Code nor the Treasury Regulations impose any skill, knowledge, training, or other qualifications on tax return preparers. Members of the public, who are unaware that no such requirements exist, have no means of determining which preparers are ethical and competent and which are not.

Improving the quality of tax return preparation will benefit all taxpayers. First, individuals who use paid preparers will be less likely to file erroneous tax returns. Because erroneous returns result in unexpected tax liability, imposition of interest on back taxes, and time spent resolving problems, even inadvertent errors cause hardship. In addition to individual hardships, correcting these returns diverts Service resources from other taxpayer education and enforcement activities. Second, taxpayers who are least able to understand complicated tax rules, i.e., taxpayers with little education or who speak English as their second language, should be able to consult a preparer who is competent.

Bills addressing these problems have been introduced in both Houses of Congress, and the National Taxpayer Advocate has proposed a registration system. These proposals are thoughtful responses to a problem that affects the administration of tax laws and individual taxpayers. The Section of Taxation supports a registration program for tax
return preparers who do not qualify as Regulated Professionals. To be effective, this program should have six components: registration; examination; continuing education; public awareness; administration; and funding. My testimony focuses on these components.

Registration. The program should establish criteria for determining which preparers are subject to the Registered Preparer program rules. Limiting the registration requirement to any preparer who both prepares at least five tax returns in a calendar year and who receives fees totaling at least $5,000 per annum for such preparation would assure targeting of the program where it is most needed – on commercial preparers. Obviously, any initial registration thresholds can be revisited in light of information gathered in the program’s early years. What is important is that the program adopted not burden or interfere with volunteer tax assistance programs, such as VITA, or other non-commercial tax return preparation for low-income taxpayers, relatives, civic groups, etc. (even if the preparer receives a modest payment or expense reimbursement). In addition, we do not believe that there is any need to include Regulated Professionals in a registration program and would oppose such inclusion.

Examination. An examination can test technical knowledge, competency to prepare returns, and familiarity with the standards of tax practice required of preparers. But an examination may not be the only means for assessing competence. Congress might, for example, consider “grandfathering” individuals who have prepared returns for
at least three years without being assessed preparer penalties (at activity levels in each of those years that would have met the registration threshold had it been in effect).

The Registered Preparer program should not be structured in a manner that might adversely affect recruiting new tax preparers. Unless qualification examinations are offered on a frequent basis, entry-level preparers might be denied registration based on timing rather than on lack of knowledge. Perhaps an always available on-line examination with suitable security protections could be designed. Because being unregistered has potentially adverse consequences, Congress may wish to provide interim registration status for individuals who are relatively new tax preparers. Interim registrants might be subject to continuing education requirements and mandatory supervision by Registered Preparers or Regulated Professionals. A maximum time limit for interim status would be appropriate.

Continuing Education. The Section supports mandatory continuing education for retaining status as a Registered Preparer. This requirement mirrors requirements already imposed on most Regulated Professionals. Registered Preparers can focus their continuing education on those topics that are most relevant to their practices. We believe that continuing education is more likely to serve the public’s needs than annual re-examination of preparers. It is also likely to involve fewer administrative costs. Mandatory re-examination and other appropriate sanctions might be imposed on Registered Preparers who fail to meet the continuing education requirement.
Public Awareness. Public lists of Registered Preparers should be available in both print and online formats in English and other languages. Public service announcements and similar publicity should acquaint preparers and the public with the new program.

Administration. A registration program will be successful only if it is effectively administered. However, the mechanics of registration, record-keeping, credentials verification, and examination administration could be performed by one or more private contractors under Service supervision. This approach would avoid burdening Service employees with tasks that are largely clerical and preserve Service resources for matters requiring judgment, such as examination content and discipline of preparers who violate the rules. The IRS Office of Professional Responsibility ("OPR") should receive authority to regulate Registered Preparers comparable to the authority it has for Regulated Professionals. The OPR should be charged with devising the qualifying examination or approving an examination prepared by others. Allowing routine program administration tasks to be performed by private contractors would be one way of assuring that the program does not adversely affect the Service’s existing taxpayer service and enforcement functions.

Funding. Congress must adequately fund any Registered Preparer program. If private contractors administer registrations and examinations, they might directly collect fees sufficient to offset their costs. The OPR or any other Treasury or IRS offices given responsibility for publicity of the program, oversight of the registration and examination
process, and Registered Preparer discipline must have adequate staffing and funding to perform those tasks.

Summary

A well-designed and administered Registered Preparer program would benefit taxpayers who use preparers and benefit tax administration generally. Such a program would support the Service’s focus on enforcement and further its commitment to ensuring the integrity of the tax system. A registration program would recognize that tax return preparers are an integral part of effective tax administration and should reduce the likelihood that tax returns prepared by such preparers will include inadvertent and purposeful errors.

As always, Section members stand ready to work with you and your staff members on this important matter.