

# THE TAX PROFESSIONAL

Information on and discussion of issues of importance to the tax professional industry by veteran tax pro Robert D Flach

JULY 2019

## TAXPRO BUZZ

<https://content.govdelivery.com/accounts/USIRS/bulletins/24aab6c>

The final word is out on the feeble attempts by some states, like NJ, to work around the SALT, limitation, according to "IR-2019-109: Final Regulations on Charitable Contributions and State and Local Tax Credits" -

*"The U.S. Department of the Treasury and the Internal Revenue Service today issued final regulations that require taxpayers to reduce their charitable contribution deductions by the amount of any state or local tax credits they receive or expect to receive in return."*

[https://patch.com/new-jersey/morristown/irs-stops-njs-attempts-bypass-trump-tax-law?](https://patch.com/new-jersey/morristown/irs-stops-njs-attempts-bypass-trump-tax-law?hpid=hp_top-story%3Airs-stops-njs-attempts-bypass-trump-tax-law%3Ahomepage%2Fstory)

As explained in the article "IRS Stops NJ's Attempts To Bypass Trump Tax Law" from PATCH.COM -

*"The IRS effectively nullified New Jersey legislation passed last year that allowed municipalities to establish charitable funds where taxpayers can donate in return for a property tax credit."*

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## TO REGULATE OR NOT TO REGULATE

This month's topic for discussion is regulation of tax preparers.

A press release from Congressman Panetta (<https://panetta.house.gov/media/press-releases/congressman-panetta-co-introduces-legislation-protect-taxpayers-require-tax>) tells us -

*"Congressman Jimmy Panetta (D-CA) and Congressman Ted Yoho (R-FL) introduced the Taxpayer Protection and Preparer Proficiency Act. This legislation allows the Internal Revenue Service (IRS) to require minimum standards for paid tax preparers. Senate Finance Committee Ranking Member Ron Wyden (D-OR) and Senator Ben Cardin (D-MD) have introduced a companion bill, S. 1192, in the Senate."*

It goes on to say -

*"The Taxpayer Protection and Preparer Proficiency Act requires tax preparers demonstrate competency in preparing returns, claims for refund, and associated documents. It also requires preparers to complete continuing education requirements."*

The release does not specifically state if preparers would be required to pass a test.

First let us identify just what is a tax preparer.

A tax preparer is a person who assists an individual (who I will refer to going forward as "taxpayer" – whether or not he or she actually pays any tax) in preparing a government form – the 1040 and NJ-1040, IT-201, PA-40 or whatever.

In most cases the preparer is trained in the "instructions" for the government form – the US Tax Code is in effect the "instructions" for the 1040 – and has experience in preparing the form. The information required to properly complete the form is given to the preparer by the taxpayer, and the preparer uses his or her knowledge and experience to enter the information provided by the taxpayer properly on the form.

The taxpayer signs the completed form to attest that the information on the form, which he or she has given to the preparer, is true, correct and complete. The preparer signs the form to identify himself or herself and to verify that the form was completed using information provided by the taxpayer.

The preparer does not have to personally verify and attest to the veracity of each and every entry on the form – just that all the information on the form was provided by the taxpayer. It is the responsibility of the government to verify the veracity of the information on the form, with a 1040 via matching and the audit process.

Obviously, the preparer must not willfully, with the intent to defraud, enter false, incorrect or incomplete information on the return. If the preparer knows, via independent personal knowledge, that information provided by the taxpayer is false he or she must refuse to enter the false information on the form or refuse to complete the form altogether. If the preparer has questions about the truthfulness, correctness or completeness of any information provided he or she must seek clarification from the taxpayer.

While the government does, and should, have the authority to regulate persons who officially represent the taxpayer in the various levels of the audit process – to "practice" before the IRS – it does not, and should not, have the authority to regulate the tax return preparer. Of course, the government does have the authority to fine or otherwise penalize a preparer who willfully conspires with a taxpayer to defraud the government by entering knowingly false information on the form.

The above all apply to a person who assists an individual in preparing any government form – a census form, a student financial aid form, etc. The Form 1040 is just another government form.

It is true that because any Tom, Dick or Harriet can hang out a shingle as a tax preparer the taxpayer-public needs a way to differentiate trained, experienced and knowledgeable tax professionals from someone who simply buys a software package and thinks they are a tax preparer. Voluntary designations with established requirements and standards, like EA (Enrolled Agent), ATP (Accredited Tax Preparer) and ATA (Accredited Tax Advisor), are an excellent way to identify qualified and competent tax preparers.

To be perfectly clear, the designation CPA is NOT in any way, shape or form an indication of 1040 tax knowledge, currency or competence. Just because a person has the initials CPA after his or her name does NOT mean that he or she knows his or her arse from a hole in the ground

about preparing 1040s. Clearly many CPAs most certainly do – but only because of their individual training and experience.

A voluntary tax preparer designation, not mandatory regulation of tax preparers, is the way the IRS should proceed. This does not require an act of Congress. However, the current voluntary program of the IRS – the Annual Filing Season Program (AFSP) – is faulty and inadequate.

1. The program does not provide those who meet the requirements with an identifiable credential or designation, with accompanying initials, like the failed “Registered Tax Return Preparer” designation, that the recipient can use in advertising and promotion to identify their competence and currency in 1040 preparation. Those who pass the test and take the CPE are merely placed on a list of IRS recommended preparers and given a plaque to hang in their office.

2. The program does not call for an initial competency test. Instead, participants must pass an annual “comprehension test” upon completion of the required six-hour “federal tax filing season refresher course.”

3. The public database, if it will actually be used by a material number of taxpayers seeking professionals, is merely an alphabetic listing of all “record of completion” preparers mixed in with others of “recognized credentials,” some which nothing to do with 1040 preparation, and “higher levels of qualification and practice rights”, and is large and confusing.

4. The new program denies unenrolled tax preparers who chose not to participate the right to represent their clients before the service during an examination of a return that they have prepared and signed. All tax preparers with a valid PTIN must have the right to defend or explain, or assist their clients in defending or explaining, the tax returns they have personally prepared during the audit process.

The IRS should create a designation, Registered Tax Return Preparer (RTRP) would be an appropriate title, as part of a voluntary two-tiered certification program that includes the current Enrolled Agent designation.

A preparer, including CPAs and attorneys, would first apply for and be granted the RTRP designation by way of a test that is limited to tax preparation. Minimum annual CPE in federal tax topics would be required once the RTRP designation was granted. After a year, an RTRP could elect to take a second test, with emphasis on taxpayer representation issues and other advanced topics, to become an ETRP (Enrolled Tax Return Preparer -- a new title for the current Enrolled Agent) and be permitted to “practice” before the IRS.

The voluntary RTRP program would allow competent “unenrolled” preparers the respect and acknowledgement that they deserve, based on their knowledge and experience, but do not currently receive. Allowing CPAs and attorneys who prepare tax returns to become an RTRP under the new voluntary program would provide these professionals with a credential in 1040 preparation, and therefore provide recognition of their competence and currency in preparing individual income tax returns. CPAs and attorneys who become RTRPs would have no need to go on to become an ETRP, as they are already permitted to “practice” before the IRS.

As an alternative I proposed an independent industry-based tax preparer designation program in my ACCOUNTING TODAY editorial “It’s Time for Independent Certification for Tax Preparers” (<https://www.accountingtoday.com/news/its-time-for-independent-certification-for-tax-preparers>).

FYI - I do not oppose requiring tax CPE as a condition for renewing one’s PTIN.

So, what do you think?

## **TAXPRO BUZZ** (continued from Page 1)

<https://www.irs.gov/pub/irs-pdf/p5296.pdf>

ACCOUNTING TODAY talks about the IRS "Comprehensive Taxpayer Attitude Survey" in "What Taxpayers Really Think" -

*"The Attitude Survey offers some interesting understandings on how taxpayers view the IRS and fellow taxpayers. It provides many findings about taxpayer needs and preferences – and what taxpayers value."*

One of the "takeaways" from this survey –

*"As taxes get more complex, the more the tax pro is needed."*

<https://www.kiplinger.com/slideshow/taxes/T043-S001-tax-plans-2020-democratic-presidential-candidates/index.html>

KIPLINGER.COM looks at the "Tax Plans for All 24 Democratic Presidential Candidates".

Assuming Trump lasts until 2020, I will most definitely vote for whoever gets the nomination of the Democratic Party - not because I am a staunch Democrat or liberal but because I am an intelligent and patriotic American. However, I reject the ongoing Democratic theories, included in the tax plans and discussions of these candidates, that the solution to all our ills is to "tax the rich" simply because they can afford it, and that the US Tax Code should be used for social engineering, to redistribute wealth, and to deliver federal welfare and other government benefits.

With one exception, nothing in any of the tax plans or proposals of the Democratic candidates that have tax plans or proposals is new or innovative. The one new and innovative item, something I have not seen elsewhere or thought of myself, is from Rep Eric Swalwell, who proposes allowing employers to make tax-free payments toward their workers' student loans.

<https://www.forbes.com/sites/kellyphillipserb/2019/06/27/all-of-the-times-candidates-talked-tax-during-a-crowded-democratic-debate/#2c499ee112af>

<https://www.forbes.com/sites/kellyphillipserb/2019/06/28/more-tax-talk-in-the-second-democratic-debate/#191a38247fd4>

In the above two posts our Friendly Neighborhood TaxGirl reviews what the Democratic candidates said about taxes in the two televised debates.

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## **TAX PROFESSIONAL FORMS, SCHEDULES AND WORKSHEETS**

I have been preparing 1040s since 1972. Over the years I have developed a collection of forms, schedules and worksheets that have proven very helpful in my practice. Some forms are given to clients to help them provide me with the information I need to prepare their returns. Some are used as "memos" to the client's copy and my office file copy to back-up items reported on the returns. Others are used as attachments to the returns.

I am currently working on updating a compilation of my forms, schedules and worksheets that I will be offering for only \$8.95! The compilation will reflect the changes made by the GOP Tax Act. *Please be aware that these items are copyrighted material and is for your internal use only.*

The package will be sent as a "word document" email attachment, so you may edit and revise them to personalize them to your firm, customize them be more relevant to your particular practice, clients or specific professions, or update for annual COLAs or tax law changes.

Here is a partial list of some of the forms, schedules and worksheets included in the compilation-

Statement of Municipal Interest  
Statement of US Government Obligations  
Statement of Dividend Income  
Statement of Investment Income  
Statement of Pension Income and Annuity Income \*  
Medical Expense Worksheet  
Medical Mileage Worksheet  
Medical Expenses – Out of Pocket Analysis  
Medical Expense Analysis  
Acquisition Debt Worksheet (example included)  
Home Equity Debt Worksheet (example included)  
Statement of Non-Cash Contributions  
Charitable Contribution Record – cash contributions  
Contribution Worksheet  
Gambling Log  
Summary of Casino Gambling Activity Log  
Auto Mileage Log

Business Expenses of a Freelance Writer  
Business Travel Record  
Automobile Expense Worksheet  
Auto Mileage Log  
Business Expenses of a Freelance Writer  
Business Travel Record  
Computer Use Log  
Employee Expense Report  
Employee Time Card  
Home Office Deduction Worksheet  
Cell Phone Log  
Schedule C Worksheet  
Cost Basis Worksheet  
Rental Income and Expenses – Multi-Family Home  
Statement of Rental Income and Expenses  
Statement of Rental Income and Expenses – Vacation Property  
Depreciation Schedule – Rental Real Estate  
Does Not Have To File  
Joint vs Separate Analysis

You can pre-order this compilation, which should be available at the end of July, for **\$6.70** – a 25% discount. This price is available on all orders received by **July 20<sup>th</sup>**.

Send your check or money order for \$6.70, payable to TAXES AND ACCOUNTING, INC, and your email address to –

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As always, I am interested in your thoughts on what I discussed in this issue. Email me at [rdftaxpro@yahoo.com](mailto:rdftaxpro@yahoo.com) with "THE TAX PROFESSIONAL NEWSLETTER" in the subject line..

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*We must never forget that **ABSOLUTELY NOTHING** – no other issue – is more important for the future of America, American democracy, and the world in the 2020 election than removing Trump from the White House (if he lasts that long), and removing hypocritical Republicans who support and defend Trump from Congress.*

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