

Annual Filing Season Program

Cross References

- *American Institute of Certified Public Accountants*, U.S. Court of Appeals, District of Columbia Circuit, August 14, 2018

An Appeals Court has ruled that the IRS has statutory authority to establish and operate its Annual Filing Season Program (AFSP). The AFSP is a voluntary program geared toward non-credentialed tax return preparers. To receive the AFSP "Record of Completion," tax preparers must complete a certain number of continuing education hours annually.

There are two incentives for a non-credentialed tax return preparer to participate in the AFSP:

- 1) Inclusion in an IRS online directory of tax preparers alongside attorneys, CPAs, and Enrolled Agents, and
- 2) Limited practice right to represent a taxpayer in the initial stages of the audit of a return he or she prepared.

Non-credentialed tax return preparers are allowed to prepare returns for clients without participating in the AFSP, but they cannot represent their clients during any stages of an IRS audit.

The American Institute of Certified Public Accounts (AICPA) brought a suit challenging the authority of the IRS to conduct the program. In court, the AICPA presented the following arguments against the program:

- 1) AICPA members suffer harm as competitors because the AFSP creates a new credential (the "Record of Completion") that confuses consumers and causes them to patronize unenrolled preparers instead of licensed CPAs.
- 2) AICPA members suffer harm as employers because the AFSP withdrew the limited practice right unenrolled preparers had previously enjoyed and therefore limits how its members may use the unenrolled preparers in their employ.
- 3) AICPA members suffer harm as employers because the AFSP imposes new supervisory requirements on firms that employ unenrolled preparers who hold a Record of Completion.
- 4) AICPA members incur compliance costs to the extent they absorb the time and cost of unenrolled preparers in their employ who choose to participate in the AFSP.

The Appeals Court said unenrolled tax return preparers who participate in the AFSP voluntarily consent to be subject to the duties and restrictions relating to practice before the IRS, as outlined in Circular 230. They do not consent to be governed by Circular 230 merely by engaging in the business of tax preparation. The AFSP also ties violations of Circular 230 to the limited practice rights, not to the preparation of tax returns. The court said that the participants' commitment to follow Circular 230 is coextensive with the IRS's authority to regulate practice before it.

Author's Comment

In other words, the AFSP only regulates tax preparers who represent clients before the IRS during an audit. It does not attempt to regulate how tax preparers conduct their business as tax return preparers. The IRS has the statutory authority to regulate those who represent taxpayers before the IRS during an audit.