

# Chapter 4: IRS Update

Registered Tax Return Preparer Program.....	A121	Correcting Wage Statements (Form W-2c) .....	A154
Voluntary Classification Settlement Program Extended .....	A122	Online Tools and Services .....	A160
ITIN Program Changes .....	A123	Identity Theft National Crackdown .....	A166
Responding to IRS Notices .....	A127	IRS Divisions and Special Operations.....	A168
Form 2848 .....	A146	IRS Review of Tax-Exempt Status and IRS Report.....	A172

**Please note.** Corrections for all of the chapters are available at [www.TaxSchool.illinois.edu](http://www.TaxSchool.illinois.edu). For clarification about acronyms used throughout this chapter, see the Acronym Glossary at the end of the Index.

## REGISTERED TAX RETURN PREPARER PROGRAM

### CURRENT STATUS

The registered tax return preparer (RTRP) program was **suspended** as of January 18, 2013. The IRS suspended the program in response to a ruling by Judge James E. Boasberg of the U.S. District Court for the District of Columbia.<sup>1</sup> Judge Boasberg issued an order prohibiting the IRS from enforcing the regulatory requirements for RTRPs.

Consequently, unenrolled tax return preparers are not currently required to pass a competency test or to maintain a minimum level of continuing education, but they **are** required to have a preparer tax identification number (PTIN). CPAs, enrolled agents, enrolled actuaries, attorneys, and other professionals previously covered under Circular 230, *Regulations Governing Practice before the Internal Revenue Service*, must continue to meet the testing and education requirements of their professional organizations and licensing bodies.

The IRS is appealing the court decision. In addition, bills have been submitted in Congress to allow the IRS to regulate unenrolled tax return preparers. As of August 8, 2013, neither the appeal nor the legislative proposals have yielded any results.

**Note.** Oral arguments in connection with the IRS appeal of the district court’s decision have been scheduled in the D.C. Court of Appeals for **September 24, 2013**.

### HISTORY<sup>2</sup>

The Treasury Department has the authority to regulate the conduct of persons representing others before any office or agency of the Secretary.<sup>3</sup> The original grant of this authority was added to an 1884 appropriations measure to address concerns that potentially fraudulent compensation claims were being presented to and approved by the Secretary. The claims in question related to compensation for property lost in military services during the Civil War.

<sup>1</sup> *Loving v. IRS*, 2013 U.S. Dist. LEXIS 7980 (D.D.C. 2013) (*Loving I*), modified by 2013 U.S. Dist. LEXIS 13878 (D.D.C. 2013), (*Loving II*) appeal pending, D.C.C. Dkt. No. 13-0561 (Feb. 20, 2013).

<sup>2</sup> *Present Law and Background Information Related to Selected Tax Procedure and Administration Issues*. Apr. 15, 2013. Joint Committee on Taxation. [[www.jct.gov/publications.html?func=startdown&id=4515](http://www.jct.gov/publications.html?func=startdown&id=4515)] Accessed on Jul. 16, 2013.

<sup>3</sup> 31 USC §330 et seq.

The claims had been presented to the War Department for review, reviewed by an auditor, and then forwarded to Congress to determine whether to fund payment of the claims. Under the General Deficiency Act of July 7, 1884, Congress authorized appropriation of \$125,787 for “horses and other property lost in military service prior to July 1, 1881,” with the following provision.

*Provided, That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render claimants valuable service, and otherwise competent to advise such claimants in the presentation of their cases. And such Secretary may after due notice and opportunity for hearing, suspend and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.*

The provision was included to address concerns that military veterans were being cheated by disreputable agents who charged unfair contingency fees or misled their clients. Before this, the Treasury lacked the authority to declare an agent ineligible to represent a soldier. It is now codified in Title 31 USC §330(a) and (b).

### **RTRP REFUND POLICY**

Due to the injunction, the IRS announced a refund policy for those individuals who were scheduled to take the RTRP test and had already paid the fee before the test was canceled. If the test was scheduled on or after January 18, 2013, the refund should have been automatically processed by the vendor by July 19, 2013.<sup>4</sup>

### **USE OF RTRP DESIGNATION**

Individuals who successfully passed the RTRP examination before the injunction can continue to use the RTRP designation. However, these individuals are still considered to be unenrolled preparers for purposes of Circular 230. They must include the following disclaimer in any paid advertising involving print, television, or radio in which they represent themselves as RTRPs.

*The IRS does **not** endorse any particular individual tax return preparer. For more information on tax return preparers, go to [IRS.gov](http://IRS.gov).*

## **VOLUNTARY CLASSIFICATION SETTLEMENT PROGRAM EXTENDED**

Some businesses treat certain workers as independent contractors when the workers should actually be classified as employees. This results in an underpayment of employment taxes. Unless a worker files a complaint or the business is audited by the IRS or a state employment agency, it is difficult for the IRS to determine which businesses are violating the rules. However, if the IRS finds that a business has failed to classify workers correctly, the business is subject to penalties on the unpaid taxes in addition to liability for the underwithheld taxes. In order to encourage more businesses to correctly classify workers, the IRS announced the voluntary classification settlement program (VCSP) on September 21, 2011.

---

<sup>4</sup> *Registered Tax Return Preparer Test Refunds*. May 16, 2013. [[www.irs.gov/uac/Newsroom/IRS-Statement-on-Court-Ruling-Related-to-Return-Preparers](http://www.irs.gov/uac/Newsroom/IRS-Statement-on-Court-Ruling-Related-to-Return-Preparers)] Accessed on Aug. 8, 2013.

Under the VCSP, employers file Form 8952, *Application for Voluntary Classification Settlement Program (VCSP)*, to voluntarily reclassify their workers as employees. The business taxpayer then pays approximately 10% of the employment tax liability that would have been due on the compensation paid to the reclassified workers for the most recent tax year if those workers had been classified as employees for that year.<sup>5</sup> This reduced rate is determined under IRC §3509(a).<sup>6</sup> The employer will **not** be liable for any interest and penalties on the liability and will not be subject to an employment tax audit with respect to the worker classification of the class or classes of workers for prior years.

The program was expanded in February 2013. The eligibility requirements were modified to allow more taxpayers to take advantage of the program. The revision allows employers that are under an IRS audit, other than an employment tax audit, to qualify for the VCSP. Furthermore, employers accepted into the program are no longer subject to an extended 6-year statute of limitations for IRS examination of employment taxes; they are now subject to the 3-year period that normally applies to payroll taxes.<sup>7</sup>

**Note.** The VCSP and Form 8952 were discussed in detail in the 2012 *University of Illinois Federal Tax Workbook*, Volume C, Chapter 4: Schedule C.

## ITIN PROGRAM CHANGES

The individual taxpayer identification number (ITIN) is a 9-digit number issued by the IRS to individuals who require an identification number but do not qualify for a social security number (SSN) or an employer identification number (EIN).

ITINs play a key role in the tax administration process and assist with the collection of taxes from foreign nationals, nonresident aliens, and resident aliens who have filing or payment obligations under U.S. law. ITINs are designed specifically for tax administration purposes and are only issued to people who are not eligible for SSNs. An ITIN cannot be used for identification purposes outside the federal tax system.<sup>8</sup>

Individuals who may need an ITIN include the following.

- Dependent or spouse of a nonresident alien visa holder
- Dependent or spouse of a U.S. citizen/resident alien
- U.S. resident alien (based on days present in the United States) filing a U.S. tax return who is **not** eligible for an SSN
- Nonresident alien filing a U.S. tax return who is **not** eligible for an SSN

<sup>5</sup> *Voluntary Classification Settlement Program (VCSP) Frequently Asked Questions*. Jun. 27, 2013. [[www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Voluntary-Classification-Settlement-Program-\(VCSP\)-Frequently-Asked-Questions](http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Voluntary-Classification-Settlement-Program-(VCSP)-Frequently-Asked-Questions)] Accessed on Jul. 6, 2013.

<sup>6</sup> *Voluntary Classification Settlement Program (VCSP)*. Jun. 26, 2013. [[www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Voluntary-Classification-Settlement-Program](http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Voluntary-Classification-Settlement-Program)] Accessed on Jul. 6, 2013.

<sup>7</sup> IR-2013-23 (Feb. 27, 2013).

<sup>8</sup> *Additional ITIN Information*. [[www.irs.gov/Individuals/Additional-ITIN-Information](http://www.irs.gov/Individuals/Additional-ITIN-Information)] Accessed on Jul. 19, 2013.