



NHCSL

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS

RESOLUTION No. 2022-05

Setting Minimum Requirements for Tax Return Preparers

Reported to the Caucus by the NHCSL Government, Social Justice and Taxation Task
Force
Del. Alfonso López (VA), Chair

Sponsored by Rep. César Chávez

Unanimously ratified by the Caucus on December 1, 2022

WHEREAS, there are three categories of professionals allowed to represent taxpayers before the Internal Revenue Service (IRS) who are “generally unrestricted as to which taxpayers they can represent, what types of tax matters they can handle, and which IRS offices they can represent clients before:” attorneys, certified public accountants (CPAs), and other persons who “demonstrate special competence in tax matters by written examination”¹ called enrolled agents.² Other professionals, such as enrolled actuaries,³ are limited as to the scope of their practice before the IRS; and,

WHEREAS, in August 2011, the IRS created the category of Registered Tax Return Preparers, who had to pass an exam⁴ and complete certain hours of continuing education,⁵ to raise professionalism in that practice, but, in 2104, the DC Circuit Court

¹ 31 CFR, Subtitle A, Part 10, § 10.4(a)

² <https://www.irs.gov/tax-professionals/enrolled-agents/enrolled-agents-frequently-asked-questions>

³ 31 CFR, Subtitle A, Part 10, § 10.3(d)

⁴ 31 CFR, Subtitle A, Part 10, § 10.3(f)

⁵ <https://www.funcpe.com/professions/registered-tax-preparer-cpe/>

struck down the regulation at the request of three uncredentialed tax return preparers, holding that it exceeded the IRS’s statutory authority to “regulate the practice of representatives of persons before the Department of the Treasury,”⁶ *Loving v. IRS*, 742 F. 3d 1013 (2014) (Kavanaugh); and,

WHEREAS, in response to the court ruling, the IRS created the Annual Filing Season Program, a voluntary program recognizes the efforts of otherwise uncredentialed tax return preparers and who receive a Record of Completion after “a certain number of continuing education hours in preparation for a specific tax year;”⁷ and,

WHEREAS, starting with returns filed January 1, 2016, uncredentialed tax return preparers who do not participate in the Annual Filing Season Program, cannot represent clients before the IRS, but are still authorized to prepare tax returns;⁸ and,

WHEREAS, the National Association of Enrolled Agents reported in 2021 that “there are approximately 460,000 uncredentialed tax preparers who may not meet basic competency standards;”⁹ and,

WHEREAS, in a 2014 study conducted by the United States Government Accountability Office, only 2 of 19 tax preparers calculated the correct tax refund;¹⁰ and,

WHEREAS, the IRS has issued warnings to taxpayers for years over “unscrupulous or fraudulent tax preparers,”¹¹ listing such tax preparers in their “Dirty Dozen,” a list of common and prevalent scams against taxpayers that usually peak during tax filing season;¹² and,

WHEREAS, despite this, more than 55% of all American taxpayers regularly use the services of a paid tax return preparer;¹³ and,

⁶ 31 U.S.C. § 330(a)(1)

⁷ <https://www.irs.gov/tax-professionals/understanding-tax-return-preparer-credentials-and-qualifications>

⁸ Ibid.

⁹ National Association of Enrolled Agents. 2021. “NAEA Holds Joint Media Briefing on Tax Preparer Regulation.” Published August 24, 2021. <https://www.naea.org/about-naea/newsroom/naea-joint-media-briefing-tax-preparer-regulation/#:~:text=There%20are%20approximately%20460%2C000%20uncredentialed,not%20meet%20basic%20competency%20standards..>

¹⁰ McTigue, James R., Jr.. 2014. “Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors.” United States Government Accountability Office. Published April 8, 2014. <https://www.gao.gov/assets/gao-14-467t.pdf>.

¹¹ <https://www.justice.gov/opa/pr/justice-department-continues-efforts-stop-fraudulent-tax-preparers>

¹² <https://www.irs.gov/newsroom/dirty-dozen>

¹³ See Patel, Kush. “Paying Off: Industry operators will need to adjust to the trend of electronic services.” IBISWorld Industry Report 54121d. Published August 2019. <https://www.gsa.gov/cdnstatic/54121D%20Tax%20Preparation%20Services%20in%20the%20US>

WHEREAS, tax return preparers and tax preparation companies are 75% more prevalent in low-income neighborhoods than other neighborhoods,¹⁴ thus disproportionately targeting Hispanics and other people of color given well-known income disparities; and,

WHEREAS, the IRS audits and investigates tax returns of low-wage workers at a rate five times higher than others,¹⁵ a situation that may be due to the low quality of the tax advice they receive from uncredentialed tax preparers; and,

WHEREAS, H.R. 4184, the Taxpayer Protection and Preparer Proficiency Act of 2021,¹⁶ currently before Congress, seeks to undo the ruling of the DC Circuit Court in *Loving v. IRS*, 742 F. 3d, by reinstating the Registered Tax Return Preparer Program, setting minimum competency standards, and adding all tax preparers to the regulatory scope of the Department of the Treasury.¹⁷

THEREFORE, BE IT RESOLVED, that the National Hispanic Caucus of State Legislators calls on the United States Congress to enact H.R. 4184, otherwise known as the Taxpayer Protection and Preparer Proficiency Act of 2021, or any substantively similar legislation, to reinstate the Registered Tax Return Preparer Program, and ensure competency standards for paid tax return preparers.

THE GOVERNMENT, SOCIAL JUSTICE AND TAXATION TASK FORCE RECOMMENDED THIS RESOLUTION TO THE EXECUTIVE COMMITTEE FOR APPROVAL. THE EXECUTIVE COMMITTEE UNANIMOUSLY APPROVED THIS RESOLUTION AT ITS MEETING OF AUGUST 12, 2022.

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS UNANIMOUSLY RATIFIED THIS RESOLUTION ON DECEMBER 1, 2022 AT ITS ANNUAL MEETING IN LAS VEGAS, NEVADA

[%20Industry%20Report.pdf](#). And see, McTigue, James R., Jr. "Paid Tax Return Preparers: In a Limited Study, Preparers Made Significant Errors." United States Government Accountability Office. Published April 8, 2014. <https://www.gao.gov/assets/gao-14-467t.pdf>.

¹⁴ Weinstein, Paul, and Bethany Patten. 2016. "The Price of Paying Taxes II: How paid tax preparer fees are diminishing the Earned Income Tax Credit (EITC)." Progressive Policy Institute. Published April 2016. <http://www.progressivepolicy.org/wp-content/uploads/2016/04/2016.04-Weinstein-Patten-The-Price-of-Paying-Takes-II.pdf>.

¹⁵ Syracuse University. 2022. "IRS Audits Poorest Families Five Times the Rate for Everyone Else." Transactional Records Access Clearinghouse. Published March 8, 2022. <https://trac.syr.edu/tracirs/latest/679/>.

¹⁶ U.S. Congress. House. *To Set Minimum Standards for Tax Return Preparers*, HR 4184. 117th Cong., 1st sess. Introduced in House June 25, 2021. <https://www.congress.gov/bill/117th-congress/house-bill/4184/text?r=9&s=1>.

¹⁷ U.S. Congress. House. *To Set Minimum Standards for Tax Return Preparers*, HR 4184. 117th Cong., 1st sess. Introduced in House June 25, 2021. <https://www.congress.gov/bill/117th-congress/house-bill/4184/text?r=9&s=1>.