

**Statement of Judith Akin, EA.  
Before the IRS Oversight Board  
Room B-318 Rayburn House Office Building**

**January 27, 2003**

Madam. Chairwoman and members of the IRS Oversight Board, I am honored to present this statement on behalf of the National Association of Enrolled Agents (NAEA), the professional society of Enrolled Agents.

I am Judith Akin, EA and I am the elected President of NAEA. I have been an Enrolled Agent since 1976 and am in private practice in Oklahoma City, OK where I work with individual and small business taxpayers. I believe you already have a copy of my biography in your notebook.

Today, I am representing the National Association of Enrolled Agents whose 10,000 members are tax professionals licensed by the U.S. Department of the Treasury to represent taxpayers before all administrative levels of the Internal Revenue Service.

Enrolled Agents were created in 1884 to ensure ethical and professional representation of claims brought to the Treasury Department. Members of NAEA ascribe to a Code of Ethics and Rules of Professional Conduct and adhere to annual Continuing Professional Education standards that exceed IRS requirements.

Like attorneys and Certified Public Accountants, we are governed by Treasury Circular 230 in our practice before the Internal Revenue Service. We are the only tax professionals who are tested by the IRS on our knowledge of tax law.

Each year, we collectively work with millions of individual and small business taxpayers by providing tax preparation, tax planning, representation and other financial services. Consequently, Enrolled Agents are uniquely positioned to observe and comment on the average American taxpayer's experience within our system of tax administration.

**Issues of Concern to NAEA Members**

There are two primary issues we would like to discuss with you today. First, we would like to express our continued strong opposition to the free e-filing consortium. Secondly, we would like to share with you our concerns about the accessibility of e-services.

As we wrote to President Bush more than a year ago, we are pleased to have supported the changes made to the Internal Revenue Service and applauded then Commissioner Rossotti's dedication to remaking the IRS into an agency supportive of the needs of our

country's taxpayers. This support has included greater emphasis being placed on the electronic filing of tax returns. We understand that IRS has a Congressionally mandated target of 80% e-filed tax returns by 2007. However, we believe the free e-filing consortium is an unwarranted intrusion into the private sector. Our members continue to believe that it is an insult to their professionalism and an assault on their right to practice.

We would remind you that it was only last year – filing season 2002 -- that virtually all tax forms and schedules could be e-filed. There are still bugs to be worked out of the system. For example, the number of times a specific item – for instance, an installment sale – could be input was limited. This prevented more complex returns – those IRS is most interested in obtaining – from being e-filed.

On another note, we are dismayed that IRS in its e-filing promotions is sending taxpayers to individuals who may not be licensed professionals, who have not been tested, required to take continuing education, who have no standards of professional conduct or a code of ethics. Rather, IRS is promoting Electronic Return Originators or EROs who may be simply clerks down at the local furniture store, car dealership, check cashing facility, or the corner liquor store.

Here is what IRS is saying to taxpayers about e-filing in:

"This year, e-file and go paperless! It is accurate and secure. You can have a tax professional, who is an *authorized* e-file Provider, prepare your return and you sign it electronically, using a five-digit, self selected PIN and have your provider transmit it for you electronically. Depending on the tax professional and specific services requested, a fee *may* be charged."

We wonder why anyone would bother with professional standards when IRS is so keen on promoting those who have no credentials. In most states, you do not have to be tested, licensed, take CPE, or have any competence in tax to be a paid tax preparer.

The standards are even lower to be an ERO. All an ERO must do is undergo a minimal background check and provide a thumbprint. You need have no tax expertise at all.

According to a report by the Treasury Inspector General for Tax Administration, "E-File Providers Are Not Adequately Screened" in June 2002:

"Our review identified that the IRS does not have effective screening procedures to adequately determine who should be allowed to participate or to continue to participate in the e-file program. Specifically, we found that the IRS does not independently validate age and citizenship requirements. Our analysis of IRS data identified e-file providers who were not United States citizens, were under the age of 21, or were identified as deceased. In addition, screening checks publicized to the taxpaying public as being extensive were found to be limited primarily to whether an individual filed tax returns and paid taxes due. For those individuals that file electronic tax returns as part of IRS' volunteer income tax preparation program, no checks are performed. We also identified that for those

limited number of individuals selected for a criminal background check, 60 percent of the individuals received authorization to participate in the e-file program before results from the Federal Bureau of Investigation (FBI) were received and analyzed by the IRS. Finally, testing found that once individuals are authorized to participate in the e-file program, no subsequent non-tax related screening checks are performed to ensure these individuals continue to maintain a high degree of integrity and adhere to the highest professional and ethical standards.”

To the average taxpayer, the IRS authorized e-filer is becoming the equivalent of the CPA, attorney or yes, Enrolled Agent. Moreover, IRS has even given them a seal of approval to stick on their window. Is IRS going to accept liability for the errors of these nonprofessionals? Apparently not. In conversations with senior IRS management we’ve been told *caveat emptor* or buyer beware.

### **Electronic Account Resolution Services**

NAEA supports increasing the number of tax returns filed electronically and understands that incentives to those in the tax industry, particularly tax return preparers, are needed to achieve the electronic filing goals established by Congress. The “e-services” program for practitioners fosters this goal and has, within its scope, many opportunities beneficial to practitioners in serving their clients.

For the past 8 years, NAEA has strongly encouraged its members to embrace technology. Our strategic plan in fact closely parallels that of IRS in terms of utilization of technology to make tax practice and administration more efficient. More than 5 years ago, NAEA urged the adoption of a system to enable Enrolled Agents and other Circular 230 practitioners to utilize electronic means for account resolution. From 2000 until the middle of last year, NAEA piloted with IRS the Practitioner Secure Messaging System (PSMS) on which the e-services program is based. We had asked for this program several years ago and were certain it would lure many Circular 230 practitioners to develop a higher comfort level with electronic forms of communication.

With the above having been said, we have a deep concern about an aspect of the program. Our concern is founded on the view that any initiative having the potential of compromising a taxpayer’s privacy is a matter that must be confronted and overcome before its initiation. This is a situation existing for e-services.

The initiative provides for an e-filer or ERO who has electronically filed at least 100 tax returns to register online giving his or her name, date of birth, social security number, and adjusted gross income for the prior or current year. The provider then will be furnished a paper personal identification number (PIN). After this occurs, the provider will be able to obtain a host of things, such as employer identification numbers (EINs), record of account and return transcripts, and has the opportunity to resolve certain account issues, effect installment agreements, and electronically file powers of attorney (POA), among other things which allows the preparer access to all types of personal information both electronically and through traditional avenues.

The electronic authorization will be electronically signed by the taxpayer or perhaps with only a verbal authorization it will be signed by the ERO. There are four “secrets” to be used in authentication of the electronic signature, i.e. the taxpayer’s name and address, social security number, date of birth, and adjusted gross income. The electronic return originator (ERO) will have all of this information from having prepared the taxpayer’s return because these facts are used by the tax return software. With that information, any ERO will have the “secrets.” Consequently, a registered ERO with this information will be able to make up a PIN acting as the taxpayer and then can change vital information, such as the taxpayer’s address and without real authorization fake a power of attorney and use access to the taxpayer’s private information to his or her advantage. Indeed, once the POA is on file, the ERO will have access to information from all of the taxpayer’s payors including bank accounts, security companies, employers and those people who have paid them in the past few years and a host of other personal information that has the potential of being manipulated as the ERO sees fit. We believe this constitutes identity theft. As you know, this is a matter of great concern in our nation. It should not infiltrate our tax system.

A possible way of resolving the problem is to employ NUMIDENT, already available through the master file. This information, provided by the Social Security Administration, has the taxpayer’s mother’s maiden name. This could be added to the “secrets” and would not be information available to the ERO. With this addition, there would be protection of the taxpayer’s personal information.

NAEA also has a concern about unauthorized disclosure of taxpayer information and the disclosure of tax account information to persons not authorized to represent taxpayers before the IRS. In this regard, many EROs’ activities are limited to return preparation; a great number engage in this endeavor during the filing season only. They have no training or education equipping them for tax practice and are not eligible to so practice. Hence, much of the information that would be made available to them would serve no valid purpose, would not be helpful to taxpayers, and/or would be counterproductive to effective and efficient tax administration.

A Tax Information Authorization (Form 8821) allows the release of specifically identified information to the person named thereon but does not permit that person to advocate on behalf of the taxpayer. A properly executed Power of Attorney and Declaration of Representative (Form 2848) does permit a person eligible to practice before the IRS to advocate a taxpayer’s position. As indicated above, not all EROs are eligible to engage in tax practice.

In view of this, we recommend that this aspect of e-services be broken into two sections. Section One would allow all participating EROs (1) to apply for EINs for taxpayers who have executed the third party authorization on Form SS-4 and (2) to resolve processing issues on returns where the “check-box” authorization has been executed. Section Two would allow access to all other account information only to EROs who meet the

eligibility to practice requirements and who have been authorized by the taxpayer to receive such information.

As a result and in view of the sensitivity of the information that would be made available, it is our belief that many of the benefits being offered should be limited to credentialed practitioners, i.e. attorneys, Certified Public Accountants, and Enrolled Agents. This is so even though the IRS has authority to revoke an ERO's status as such because of the transportability of the electronic filing program.

We are particularly distressed that many Circular 230 practitioners who do not engage in tax preparation work will be denied access to e-services because they only do representation work. This strikes us as inherently unfair.

### **Office of Professional Responsibility**

We are very pleased that the Office of Professional Responsibility has finally "stood up" under the IRS modernization. Brien Downing is an outstanding choice to head this office and his initial remarks to Circular 230 practitioners have been very heartening. We would respectfully request that you do what you can to ensure that his office has the resources it needs to perform efficiently and effectively. As you may know, during the last round of Congressionally mandated budget cuts, the predecessor Office of Director of Practice was severely treated. Mr. Downing cannot complete his mission without adequate resources. He is off to a promising start and we urge you to ensure his success.

### **Ability to Secure EINs Online**

We understand that it will soon be possible - perhaps as early as next month - to secure Employer Identification Numbers (EINs) online. We applaud this initiative. As we told you last year when we praised the centralization of the service for obtaining Employer Identification Numbers or EINs, technology is the way to go. However, last year, the toll-free lines were overwhelmed from the start. Seldom have we received the torrent of complaints that we received on the implementation of a new service. We hope that the roll out of the EIN online service will be smoother.

### **Training Needs**

Hand in hand with implementation of changes, goes training of employees. As we told you last year, we have been very impressed with the cultural shift toward customer service achieved by IRS. However, the same cannot be said for the training of personnel. Our members continue to report that employees are asking them to explain what is going on, have not had access to up to date materials, have not understood what they are supposed to do.

On the other hand, our members are impressed with improvements in the innocent spouse claim program. Utilization of sophisticated software to assist in determining the type of claim and whether the standards have been met to establish a claim will enable IRS to

quickly resolve claims and do so in a fair and even-handed manner. This is precisely the use of technology we believe will improve service to taxpayers and tax practitioners.

Our members also tell us that they are appreciative of the continuing spate of press releases on cases involving abusive trusts, offshore credit cards, and other tax schemes. Often, our members are on the front line in deterring taxpayers from embarking on risky, abusive schemes. The flow of information to practitioners and taxpayers is invaluable and we urge you to keep it coming. We find the Criminal Investigation unit's Web site particularly praiseworthy.

### **The Impact of Tax Law Complexity on IRS Employees**

We believe tax law complexity is an area that continues to require your attention as it impacts IRS employees and we respectfully urge you to press for simplification of the tax code.

As the National Commission on Restructuring the IRS found, there is a clear connection between the complexity of the Internal Revenue Code and the difficulty of tax law administration and taxpayer frustration. Clearly, how the public perceives how well the agency is doing its job is tied directly to the level of frustration taxpayers have with the constantly changing tax code. We urge the IRS Oversight Board to add its voice to ours and that of the National Taxpayer Advocate as well as our fellow practitioner groups here today, the American Bar Association and the AICPA, in calling for tax simplification.

As frontline practitioners, we believe Congress could provide significant relief by repealing the alternative minimum tax (AMT) for individuals. We are hopeful that incremental changes made on the Earned Income Tax Credit may provide relief but are wary about the potential for abuse. Third, phase-outs and phase-ins need to be standardized.

### **Registration of Commercial Preparers**

NAEA would like to go on record in support of National Taxpayer Advocate Nina Olson's comments in her annual Report to Congress with respect to registration and regulation of paid tax preparers. Currently only two states, California and Oregon, regulate paid tax preparers.

Ms. Olson has ratcheted up the dialogue on this issue and we are hopeful there will be meaningful discussion at IRS and in Congress as to how to best regulate individuals who are in possession of sensitive taxpayer financial information.

As Joseph Lane, EA stated in his testimony before the Commission on Restructuring the IRS more than 5 years ago, "You can recover from a bad haircut in a couple of weeks but a bad tax return can follow you for years."

We would add to that the caution that identity theft is on the increase, thanks in part to the emergence of technology. It is now possible to transmit sensitive financial information around the world in a matter of seconds. Even one of the most well established commercial tax return firms – with a splendid record of training and operational safeguards – was recently victimized when one of its local office employees took and misused sensitive financial information on a number of its clients.

The Federal Trade Commission announced on January 22, 2003 that incidents of identity theft nearly doubled in 2002. According to the Department of Justice, there were as many as 700,000 victims last year alone. We would not want IRS to be caught up in this problem. We believe there would be a tremendous backlash and a return to paper based filing. Why not risk a data entry error rather than have to take years to recover from identity theft.

### **Conclusion**

In closing, the National Association of Enrolled Agents looks forward to assisting you as you make strategic plans for our nation's tax administration. We stand ready to provide you with the views of front-line tax practitioners who work daily with millions of individual taxpayers and small businesses.