



**H&R BLOCK®**

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H&R BLOCK**

**BEFORE THE HOUSE WAYS AND MEANS SUBCOMMITTEE ON OVERSIGHT  
HEARING ON THE INTERNAL REVENUE SERVICE'S IMPLEMENTATION AND  
ADMINISTRATION OF THE AFFORDABLE CARE ACT  
SEPTEMBER 11, 2012**

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Chairman Boustany, Ranking Member Lewis, and distinguished Members of the Oversight Subcommittee, thank you for the opportunity to share H&R Block's views on the Internal Revenue Service's ("IRS") implementation and administration of the Patient Protection and Affordable Care of 2010 ("ACA").

H&R Block is the leading provider of tax preparation services. Approximately 25 million returns are prepared each year by our more than 90,000 tax return preparers ("preparers") in 10,000 offices, online, or via our software solutions. Through our tax offices we are one of the larger employers of military spouses, and in each of your congressional districts we have, on average, 37 offices, 12 franchisees, and 323 preparers.

The ACA created new processes and interactions between the tax industry, the insurance industry, and government agencies that have not existed in the past. In addition to navigating these new processes and interactions, the ACA requires the IRS to promulgate regulations, create new forms, and provide extensive education to taxpayers and tax preparers, all while still performing its core functions of interpreting and enforcing tax law and collecting revenue.

The implementation and administration of the ACA is a significant undertaking and we commend the IRS for the progress it has made thus far. The IRS clearly will face numerous challenges and conflicting demands for resources. With regard to those challenges and demands for necessary resources, we would like to address the following concerns:

1. Disparate focuses of the IRS and the Department of Health and Human Services ("HHS")
2. Finalizing ACA regulations and education of the greater tax community
3. Resources and readiness for the 2013 tax season

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**1. Disparate focuses of the IRS and HHS**

According to its mission statement, HHS is the United States government's principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves. In contrast, the mission of the IRS is to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Although the IRS and HHS have historically worked together, by way of the Social Security Administration, the ACA creates a new, more complex interaction between these two diverse agencies. The agencies have two very different focuses with respect to the ACA, albeit having a common end goal.

In general, HHS' focus for the implementation of ACA will likely include ensuring as many individuals and their families as possible, are enrolled in coverage through Affordable Insurance Exchanges ("Exchanges"), Medicaid, a Basic Health Program, or the Children's Health Insurance Program. The IRS' focus will include reconciling advance payments of the premium tax credit ("PTC") and collecting revenue from the various tax provisions of the ACA. These different focuses may lead to taxpayer confusion and unexpected tax debts as a result of overpayments of subsidies.

For example, the determination of eligibility for advance payments of the PTC by an Exchange will presumably be more flexible than the IRS' reconciliation process at the end of the year.

On one hand, Section 1411(c)(4)(B) of the ACA gives the Secretary of HHS authority to change the manner in which Exchanges determine eligibility for advance payments of the PTC. HHS has promulgated regulations stating an individual does not have to file a tax return to enroll in an Exchange but instead can use documentation from other sources to substantiate income levels. An individual without tax return data may make an attestation of projected income, and have advance payments of the PTC paid on their behalf for 90 days or longer while the Exchange is verifying their income. An Exchange may also accept an applicant's attestation on a case-by-case basis if the applicant's information cannot be verified.<sup>1</sup>

On the other hand, the IRS' standard tax collection requirements are much more stringent than HHS' requirements for enrollment and advance payments of the PTC. The IRS will require individuals to file a tax return to reconcile advance payments of the PTC and generally individuals must be able to substantiate income with tangible, verifiable evidence if the IRS so requests. If Exchanges are able to enroll individuals and use less strict income verification procedures than the IRS, individuals may receive an unpleasant surprise when they find out they are required to repay their subsidy tax credit because they estimated their income improperly, an error which may occur simply because they have not been required to file a tax return in prior years, if ever.

**Our recommendation: The IRS and HHS should develop consistent processes for income verification and eligibility. Requiring individuals to provide tax return information is the most reliable, consistent way to provide this verification. In fact, the IRS should encourage all taxpayers to file tax returns in 2013 that can be used to enroll in Exchanges in the fall of 2013. Further, the IRS and HHS should more closely align to create a communications strategy to ensure uniform messaging of this requirement. The IRS has already started dialogue to more closely align these two agencies. H&R Block is certainly appreciative of this important first step, but recommends continuing with more formal discussions to achieve alignment.**

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<sup>1</sup>Public Welfare, 45 C.F.R. §155.315 (2012)

## 2. Finalizing Regulations and Educating the Greater Tax Community

**Finalizing Regulations:** While the IRS has already provided numerous regulations, revenue procedures and rulings, and other forms of guidance, they have not yet proposed or finalized all regulations necessary to implement the ACA. With a deadline of January 1, 2014 for the implementation of most key provisions of the ACA, it may appear that the IRS has more than a year to promulgate regulations; in actuality, the IRS must complete this process much sooner in order to provide adequate time for individuals and businesses to plan for the effects of the ACA.

While H&R Block does have concerns about the impact of the ACA on individuals, one of which we address later, what is more apparent to us is the impact and timing of new regulations on small business owners. As a franchisor, we are in contact with owners of small businesses daily. Our franchisees have communicated their concern over waiting for the IRS to propose and finalize regulations. The timing of the release of regulations could impact their ability to engage in strategic planning and effectively execute business plans.

For example, businesses generally perform strategic planning to determine their employee benefit offerings and negotiate with coverage carriers at least three to four months before the end of the calendar year. In addition, open enrollment in Exchanges, including enrollment for those participating in a Small Business Health Options Program (“SHOP”), begins October 1, 2013. This means small businesses will need, at a minimum, four months to plan for 2014 and to determine if they intend to participate in a SHOP.

**Our recommendation:** Given the time required to complete the process of publicizing regulations, the IRS should ensure all regulations and other authoritative guidance related to the ACA are proposed by April 30, 2013.

**Educating the Greater Tax Community:** As mentioned previously, individuals will need adequate time to prepare for the impacts of the ACA. The majority of taxpayers do not yet understand the ACA and how it will affect them. For the implementation of the ACA to be successful, the IRS and HHS must provide individuals with timely education and guidance. This may be one of the most challenging tasks the IRS will face in 2013.

The ACA is complex and there is no one universal communication method that will be effective for all audiences. The agencies will need to educate individuals through multiple channels including television, the Internet, and social media. H&R Block suggests the IRS also consider private-public partnerships to disseminate information to taxpayers. While the IRS has not communicated any intent to leverage the tax preparation community for this purpose, we believe it is logical for the IRS to use the more than 700,000 PTIN holders to help with outreach and education efforts.

**Our recommendation:** The IRS should leverage the tax preparation community, through the return preparer initiative, to amplify taxpayer outreach and education efforts.

## 3. Resources and Readiness for the 2013 Tax Season

As demonstrated above, the implementation and administration of the ACA will require considerable resources. These new duties may dilute the IRS' ability to maintain focus on key initiatives and improvements to the delivery of the core functions of the IRS. If the IRS is unable to continue to focus on its core functions, taxpayers will be adversely affected.

To ensure taxpayers are not adversely affected and instead are provided top quality service in 2013, the IRS must address and correct problems identified in the 2012 filing season, complete the transition to full implementation of the Modernized e-File system ("MeF"), continue to improve fraud controls, be prepared to respond to potential late tax legislation, and develop strategies to successfully implement the Return Preparer Initiative ("RPI"), all while preparing for and handling the effects of a delay to the traditional acceptance date of e-filed returns.

**Tax Season Delays:** The IRS has told the tax preparation industry it will begin accepting e-filed returns for tax season 2013 on January 22. This is five days later than the January 17<sup>th</sup> acceptance date in tax seasons 2011 and 2012, and seven days later than the January 15<sup>th</sup> acceptance date in tax season 2010.

Given the standard refund delivery time of 10-21 days, a later than traditional start date for e-file processing means many early season filers will not receive their refunds until well into February. This delay will most likely negatively impact low income taxpayers, who often file in January to receive their refunds as soon as possible. With an average refund of more than \$3,500 for January filers (according to the IRS' Cumulative Individual Income Tax Return Report for January 27, 2012), this will be the largest lump sum of money most of those taxpayers will receive all year.

Our clients rely on this money every year to catch up on rent and utilities, pay for holiday expenses, and make much needed repairs to their homes and vehicles. The absence of this much needed funding will disrupt the lives of many taxpayers, adding late fees and interest to their existing debts, and causing many to resort to alternative loans. If the IRS does not provide taxpayers with advance notice of this delay, taxpayers will be completely unprepared to mitigate the effects.

A delay in the processing of returns and refunds will also increase the frequency, volume and urgency of phone calls to toll-free IRS customer service centers. A surge of this nature occurred in the 2012 filing season when fraud detection programming errors and transmission problems with the MeF system delayed the receipt of refunds for approximately 12.5 million early filers. Coupled with a decrease in funding for toll-free telephone services in 2012, taxpayers were met with increased hold times and a decreased level of service. The tax preparation community and the IRS drew heavy criticism as a result.

If the IRS does not move up the acceptance date for e-filed returns, and taxpayers are not given adequate advance notice of the impact of the delay, the IRS and tax preparation industry will again face criticism from taxpayers. Ultimately, the delay will hurt the taxpayers who need help the most.

**Our recommendation: The IRS should begin accepting and processing e-filed returns no later than January 15, 2013.**

*Modernized E-file, Late Legislation, and Fraud:* January 2013 also marks a change for the IRS as they will be undertaking the important transition to full-implementation of MeF. As mentioned previously, in tax season 2012 a number of returns were delayed due to programming errors and transmission problems with the MeF system. The IRS was able to remedy the delays by temporarily switching back to the legacy e-filing system (“Legacy”).

Based on the lessons learned from the 2012 tax season, prudence dictates the IRS maintain Legacy as a contingency for one more filing season. While maintaining Legacy is necessary to maintain operational continuity, the requirement to program two separate systems is burdensome for the IRS, H&R Block, and all other e-file software developers. The IRS has provided no framework for determining what circumstances would cause it to deploy Legacy. As such, it is unclear what purpose the additional work serves if there’s no definition of what severe conditions will be mitigated or avoided.

The challenge of maintaining and programming two systems is further compounded by the potential for late tax legislation and the need to create effective new processes and programs to detect and prevent fraud. With two separate systems on point, responding to late tax legislation and remaining nimble in an ever-changing fraud environment will presumably be twice as difficult.

**Our recommendation: The IRS should maintain Legacy as a contingency while making the transition to full-implementation of MeF. The IRS should provide the framework they intend to use to determine if and when Legacy will be deployed, and how deployment will be communicated to the tax preparation community. The IRS should also promptly notify impacted taxpayers of problems with return processing systems.**

*Return Preparer Initiative:* H&R Block is supportive of the RPI and believes it will help raise the professional and ethical standards of the tax preparation profession. We acknowledge it will take considerable time and effort to make sure all PTIN holders meet the requirements of the RPI by the December 31, 2013 deadline. In light of this, we strongly encourage the IRS to take additional steps to ensure they are able to hold fast to this deadline.

In order to adhere to the deadline, the IRS and its vendor, Prometric, must work with the tax preparation community to ensure the more than 300,000 preparers required to take the competency examination are able to do so by the deadline. The IRS should develop a strategy to ensure Prometric is able to service each preparer. As many preparers live in rural, remote areas without a nearby testing center, it is critical this strategy include making mobile testing sites available. This strategy should not include extending the testing deadline. An extension of the deadline would delay the intended benefits of the RPI and be a disservice to taxpayers.

**Our Recommendation: The IRS and its testing vendor should develop strategies to ensure they have provided adequate access to testing facilities and sufficient testing capacity to meet the needs of the tax preparation community.**

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Once again, H&R Block recognizes the challenges of implementing and administering the ACA, and commends the IRS for the progress it has made thus far. We are concerned the added strain the ACA places on the IRS may lead to a deterioration of the IRS' focus on its core functions and its mission to provide taxpayers top quality service. We recommend the IRS create public-private working groups to address this concern. We encourage the Committee to ensure the IRS has the resources needed to maintain its core functions and mission while implementing and administering the ACA, and to ensure the IRS is using those resources efficiently. We thank the Chairman and the Committee for organizing this hearing.

EMERGOED UNTIL 9/11/2012 AT 10:00 AM.