



## **INTRODUCTION**

1. This lawsuit challenges the authority of the Internal Revenue Service (“IRS”) to license tax return preparers. Under recently promulgated Department of Treasury regulations, Plaintiffs Sabina Loving, Elmer Kilian, and John Gambino (and other independent tax return preparers like them) will be required to obtain permission from the IRS to prepare tax returns for compensation by taking an exam and paying fees to become a “registered tax return preparer.” In order to maintain this status, they will have to continue paying fees and taking continuing education courses on an indefinite basis. Meanwhile, major tax preparation firms such as H&R Block supported these regulations, and powerful interest groups such as the American Institute of CPAs have successfully lobbied for an exemption from these regulations which allows the vast majority of tax preparers at CPA firms and law firms to be unlicensed “supervised preparers.” Plaintiffs do not qualify for this special exemption. Industry experts have observed that the regulations impose a barrier to entry to the tax preparation market, and will create a vacuum in the market for tax preparers as small and independent tax preparation businesses exit the market. This new licensing scheme exceeds the IRS’s statutory authority under 31 U.S.C. § 330. Congress has not given the IRS the authority to license tax return preparers, and the IRS cannot grant itself that authority.

## **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, and this Court has authority to grant the relief requested under 28 U.S.C. §§ 2201, 2202, and 5 U.S.C. §§ 702–706.

3. Venue lies in this Court pursuant to 28 U.S.C. § 1391(e).

## THE PARTIES

4. Plaintiffs Sabina Loving, Elmer Kilian, and John Gambino are professional tax return preparers. Plaintiffs each own and operate their respective businesses, which prepare tax returns for paying clients. Plaintiffs are not attorneys, certified public accountants (“CPAs”), or any type of enrolled agent or enrolled actuary, nor are they supervised by an attorney, CPA, any type of enrolled agent, or an enrolled actuary. Plaintiffs currently prepare tax returns for compensation without any license or certification from the IRS, although they each have obtained or applied for a Preparer Tax Identification Number (“PTIN”), as required by law.

5. Plaintiff Sabina Loving is a United States citizen and a resident of Illinois.

6. Plaintiff Elmer Kilian is a United States citizen and a resident of Wisconsin.

7. Plaintiff John Gambino is a United States citizen and a resident of New Jersey.

8. Defendant Internal Revenue Service (“IRS”) is a federal government agency and a bureau of the United States Department of Treasury, located in Washington, DC.

9. Defendant Douglas H. Shulman is being sued in his official capacity as the Commissioner of Internal Revenue. He serves as the head of the Internal Revenue Service in Washington, DC.

10. Defendant United States of America is the federal government formed under the Constitution of the United States, with its capital in Washington, DC.

### **Tax Preparation Before the New IRS Licensing Scheme**

11. A “tax preparer” is defined by federal statute as any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any tax return or claim for refund, or any substantial portion thereof, imposed under Title 26 of the United States Code. 26 U.S.C. § 7701(a)(36); *see also* 26 C.F.R. §301.7701-15.

12. Before August 2011, when the new IRS licensing scheme for tax preparers became effective, most tax preparers were unlicensed by the IRS.

13. Before August 2011, although most paid tax preparers were unlicensed by the IRS, their conduct was still regulated by a number of civil and criminal statutes governing tax return preparation that prohibit actions ranging from knowingly preparing a return that understates the taxpayer's liability to failing to sign or provide an identification number on a tax return they prepare. *See, e.g.*, 26 U.S.C. §§ 6694, 6695, 6700, 6701, 6702, 6707A, 6713, 7201, 7206, 7207, 7213, 7216, 7407. Paid tax preparers are still regulated by these statutes today. The penalties for violating these statutes included fines of up to \$100,000 per occurrence and even felony conviction and imprisonment of up to three years. Tax return preparers who demonstrate a pattern of misconduct may also be enjoined from preparing further returns.

14. Effective January 1, 2011, all tax paid preparers were required to obtain a Preparer Tax Identification Number ("PTIN") from the IRS to include on all tax returns they prepare so that the IRS could identify who had prepared the return.

15. Obtaining a PTIN did not require any competency examination or continuing education; it merely required the completion of a basic form application and the payment of a PTIN user fee, which is currently \$64.25 per year. Renewal of the PTIN did not require completion of any continuing education credits.

16. With the exception of those who were disqualified by felony convictions or discrepancies with their federal tax obligations, PTINs were (and are) issued to all tax preparers who completed the form and paid the PTIN user fee.

## **Representation and Practice Before the IRS**

17. A federal statute, 31 U.S.C. §330, governs “practice” before the Department of Treasury, and authorizes the Secretary of Treasury to “regulate the practice of representatives of persons before the Department of the Treasury” who “advise and assist persons in presenting their cases.” 31 U.S.C. § 330(a)(1).

18. Attorneys and CPAs in good standing are permitted to “practice” before the IRS by representing taxpayers in hearings, conferences, meetings, or other proceedings before the IRS under 5 U.S.C. § 500(b)–(c), which governs administrative practice.

19. In addition, the IRS offers special categories of licensure—enrolled agents, enrolled retirement plan agents, and enrolled actuaries—that enable those who are not attorneys or CPAs to “practice” before the IRS by representing taxpayers in hearings, conferences, meetings, or other proceedings before the IRS, as their qualifications permit.

20. A “recognized representative” is an individual who is recognized to “practice” before the Internal Revenue Service under the provisions of 26 C.F.R. § 601.502. Attorneys, CPAs, enrolled agents, and enrolled actuaries who otherwise qualify under the provisions of 26 C.F.R. § 601.502 may be “recognized representatives.” 26 C.F.R. §§ 601.502(b)(1)-(4).

21. Any individual who “practices” before the IRS as a “recognized representative” of a taxpayer in hearings, conferences, meetings or other proceedings must be designated as having that taxpayer's power of attorney and must file a written declaration with the IRS stating that he or she is authorized and qualified to represent that particular taxpayer. 26 C.F.R. § 601.502. IRS Form 2848, “Power of Attorney and Declaration of Representative,” is used for this purpose.

22. A “recognized representative” must file a written declaration stating that, *inter alia*, “I am not currently under suspension or disbarment from practice before the Internal Revenue Service or other practice of my profession by any other authority,” and stating that, “I am aware of the regulations contained in Treasury Department Circular No. 230 (31 CFR part 10), concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others.” 26 C.F.R. § 601.502(c).

23. IRS Form 2848 contains variations on these declarations, requiring the “recognized representative” to declare, *inter alia*, “I am not currently under suspension or disbarment from practice before the Internal Revenue Service,” and, “I am aware of regulations contained in Circular 230 (31 CFR, Part 10), as amended, concerning practice before the Internal Revenue Service.”

24. In order to represent a taxpayer in an IRS “taxpayer interview,” federal law requires that an authorized representative obtain a written power of attorney executed by the taxpayer. 26 U.S.C. § 7521(c). The representative must be an attorney, CPA, enrolled agent, enrolled actuary, or any other person permitted to represent the taxpayer before the IRS who is not disbarred or suspended from “practice” before the IRS. *Id.*

25. In defining the role of representatives who are authorized to “practice” in hearings, conferences, meetings or other proceedings before the IRS, the IRS describes the role of such representatives as acting “in the capacity of advocate-or one who acts in behalf of the taxpayer in urging particular determinations with respect to issues or controversies.” Rev. Proc. 68-29, 1968 – 2 C.B. 41.

26. The conduct of attorneys, CPAs, and the various types of enrolled agents and actuaries was (and is) regulated by the IRS under a document known as Treasury Department Circular No. 230, 31 C.F.R. Part 10, which regulates “practice” before the IRS.

### **The IRS’s New Tax Preparer Licensing Scheme**

27. In 2011, the Department of the Treasury enacted and promulgated a set of final regulations to impose an IRS-administered licensing scheme on tax return preparers who had not previously been licensed. These regulations amended Treasury Department Circular No. 230, 31 C.F.R. Part 10, the current version of which is Circular No. 230 (Rev. 8-2011) (“Circular 230”).

28. These new licensing regulations were published in the Federal Register on or about June 3, 2011 and became effective on or about August 2, 2011.

29. Major tax preparation firms like H&R Block and Jackson Hewitt supported these new licensing regulations because they imposed compliance costs that their smaller competitors will have more difficulty absorbing. Industry experts have observed that the regulations impose a barrier to entry to the tax preparation market, and will create a vacuum in the market for tax preparers as small and independent tax preparation businesses exit the market.

30. Under this new licensing scheme, professional tax return preparers who are not attorneys, CPAs, or any type of enrolled agent or enrolled actuary—and are not supervised by an attorney, CPA, any type of enrolled agent, or an enrolled actuary—must become a “registered tax return preparer” in order to file tax returns (or claims for refund) for pay. 31 C.F.R. §§ 10.3(f), 10.4(c).

31. To become a “registered tax return preparer,” one must be at least 18 years of age, pass a written examination administered by the IRS (or under IRS oversight), possess a valid PTIN, and satisfy standards relating to character and fitness. 31 C.F.R. § 10.4(c).

32. To become a “registered tax return preparer,” one must also submit the appropriate forms required by the IRS and pay a nonrefundable application fee. 31 C.F.R. § 10.5.

33. The IRS has also given itself the authority to, at its discretion, require “registered tax return preparer” applicants to file any additional information requested by the IRS, to submit to any written or oral examination under oath or otherwise, and to pass a Federal tax compliance check and suitability check. 31 C.F.R. § 10.5.

34. To renew one’s status as a “registered tax return preparer,” one must pay a renewal application fee and certify that one has satisfied the continuing education requirements. A minimum of 15 hours of continuing education credit, including two hours of ethics or professional conduct, three hours of Federal tax law updates, and 10 hours of Federal tax law topics, must be completed during each registration year. 31 C.F.R. § 10.6.

35. As defined by Circular 230, “practice” as a “registered tax return preparer” is limited to preparing and signing tax returns and claims for refund, and other documents for submission to the Internal Revenue Service. 31 C.F.R. § 10.3(f)(2).

36. A “registered tax return preparer” may also represent a taxpayer in communications with revenue agents, customer service representatives, or similar officers and employees of the IRS (including the Taxpayer Advocate Service) during an examination (audit) of a tax return or claim for refund signed by that tax preparer. But a “registered tax return preparer” may not (unless otherwise prescribed by regulation or notice) represent a taxpayer before appeals officers, revenue officers, Counsel or similar officers or employees of the Internal Revenue Service or the Treasury Department. Nor may a “registered tax return preparer” provide tax advice to a client or another person except as necessary to prepare a tax return, claim



for refund, or other document intended to be submitted to the Internal Revenue Service. 31  
C.F.R. § 10.3(f)(3).

37. “Registered tax return preparers” are not required to obtain power of attorney from their clients or complete IRS Form 2848, “Power of Attorney and Declaration of Representative”, in order to prepare and file tax returns or claims for refund.

38. Tax return preparers who are required to become “registered tax return preparers” in order to continue preparing taxes for pay must pass the competency exam by December 31, 2013. Until then, they may prepare taxes using provisional PTINs.

39. “Registered tax return preparers,” and those who are preparing taxes under provisional PTINs, are required to obtain 15 hours of continuing education courses from IRS approved providers during calendar year 2012 and each subsequent year.

40. According to the latest IRS guidance, the registered tax return preparer competency exam is a timed 2.5 hour exam consisting of 120 questions (100 scored questions and 20 experimental questions). Examinees are advised to arrive thirty minutes early for the exam and the average exam appointment will take three hours, not including travel or study time.

41. There is not an exact number of questions that one needs to answer correctly to obtain a passing score on the registered tax return preparer competency exam. Test questions are weighted in value to arrive at an overall pass/fail scaled score. Scaled scores are determined by calculating the number of questions answered correctly from the total number of questions in the examination and converting to a scale that ranges from 50 to 500. Scaled scores of 350 and above are passing scores.

42. A panel of industry insiders composed of Enrolled Agents, CPAs, unenrolled preparers, and IRS representatives developed a definition of the minimally qualified candidate,

which was used to determine the scaled score necessary to pass the registered tax return preparer competency exam.

43. No one who takes the registered tax return preparer competency exam will find out how many questions they answered correctly or incorrectly. Those who pass the exam will simply be notified that they pass, while those who do not pass the exam will receive their scaled score and a diagnostic score of 1, 2, or 3 for each sub-domain of the exam, indicating how close they were to a passing score on that sub-domain.

44. The nonrefundable fee for the competency exam for “registered tax return preparers” is \$116. This is in addition to the annual PTIN renewal fee of \$64.25, the application fee to become a registered tax return preparer, the renewal application fee to maintain that status, the costs of taking 15 hours of continuing education courses, the costs of taking an exam preparation course, and the expenses of travel, lodging, and meals incurred in order to attend 15 hours of continuing education courses and an exam preparation course.

45. The IRS offers seminars that qualify for continuing education credit through the IRS Nationwide Tax Forums Online. Depending on the seminar, the cost for one credit hour is either \$45.00 or \$67.50.

46. If a “registered tax return preparer” obtained all 15 of their required continuing education credits from the IRS Nationwide Tax Forums Online, the annual cost of complying with the continuing education requirement would range from \$675 to \$1,012.50.

47. The IRS estimates that approximately 350,000 people will be subject to the “registered tax return tax preparer” licensing scheme.

48. Individual taxpayers may prepare their own tax returns by hand or with the assistance of commercial tax preparation software, without obtaining a PTIN or becoming a “registered tax return preparer.”

### **Exemption for Major Tax Preparation Firms**

49. The IRS is exempting “supervised preparers” from this new tax preparer licensing scheme if they are supervised by an attorney, CPA, or any type of enrolled agent or enrolled actuary who signs the tax returns or claims for refund they prepare, and if they are employed by a law firm, a CPA firm, or a “recognized firm” that is at least 80% owned by attorneys, CPAs, or any type of enrolled agent or enrolled actuary. Supervised preparers still obtain a PTIN, but do not sign a customer’s tax return. IRS Notice 2011-6.

50. This exemption for “supervised preparers” does not apply to preparers supervised by a “registered tax return preparer” or who are employed at a firm that is at least 80% owned by registered tax return preparers. As the IRS is currently enforcing the regulations, such preparers would need to become “registered tax return preparers” themselves. Prior to these new licensing regulations, unlicensed and unenrolled tax preparers could supervise other tax preparers.

51. This exemption for “supervised preparers” employed at law firms, CPA firms, and “recognized firms” was specifically lobbied for by powerful interest groups such as the American Institute of CPAs because the vast majority of the tax preparers employed by their members would already qualify as either “supervised preparers” or are themselves attorneys, CPAs, or enrolled agents or actuaries. Therefore, very few, if any, tax preparers at law firms, CPA firms, and “recognized firms” would have to become “registered tax return preparers.” This exemption thus gives these firms a competitive advantage over independent tax preparers who are not attorneys, CPAs, or enrolled agents or actuaries, as these independent preparers

would have to become a “registered tax return preparer” themselves in order to continue preparing taxes for compensation, and so would anyone they employ to prepare tax returns.

### **The IRS Lacks the Authority to Impose Tax Preparer Licensing Scheme**

52. The IRS claims the authority to pass, implement, and enforce these regulations under 31 U.S.C. §330, which governs “practice” before the Department of Treasury, and authorizes the Secretary of Treasury to “regulate the practice of representatives of persons before the Department of the Treasury.” 31 U.S.C. § 330(a)(1).

53. The IRS purports to regulate the preparation of tax returns (and claims for refund) by all professional tax return preparers under the authority of 31 U.S.C. § 330 because it defines “Practice before the Internal Revenue Service” as including “preparing documents; filing documents; corresponding and communicating with the Internal Revenue Service.” 31 C.F.R. § 10.2(a)(4); *see also* 26 C.F.R. § 601.501(b)(10)

54. The IRS’s interpretation of the word “practice” is contrary to, and inconsistent with, the statutory meaning of 31 U.S.C. § 330, as indicated by its text and legislative and popular history. 31 U.S.C. § 330 only authorizes the regulation of the “practice of representatives of persons” who “advise and assist persons in presenting their cases.”

55. 31 U.S.C. § 330 only authorizes the Department of Treasury to regulate those who actually represent and advocate for clients in hearings, conferences, meetings, or other proceedings before the Department of Treasury. 31 U.S.C. § 330 does not authorize the licensing of all tax return preparers.

56. Merely preparing and filing a tax return or claim for refund for a paying customer is not an act of representation, nor is it advising or assisting any person in presenting any case.

57. The IRS recognizes this distinction between representation and tax return preparation elsewhere in its regulations and procedures. Representation of a taxpayer requires obtaining that taxpayer's power of attorney. 26 C.F.R. § 601.504(a)(1). But preparing and filing tax returns or claims for refund for a taxpayer does *not* require a preparer to obtain the power of attorney for that taxpayer. *See* 26 C.F.R. § 601.504(a).

58. The original 1884 text of 31 U.S.C. § 330, before it was revised in 1982 for stylistic purposes, used the term "claimants" to refer to represented persons, and described those being regulated under the statute as "agents, attorneys, or other persons representing claimants before [the Secretary of Treasury's] department" and as "representatives of claimants." It authorized the Secretary of the Treasury to ensure that such representatives were "competent to advise and assist such claimants in the presentation of their cases."

59. Legislative and academic history indicates that the reason for the passage of 31 U.S.C. § 330 and a related statute, 43 U.S.C. § 1464, in early July 1884 was to prevent unscrupulous attorneys or claims agents from taking advantage of military pensioners and others who had monetary claims against the U.S. government, particularly claims for lost horses. The statute was thus limited in scope to regulating "representatives of claimants" who "advise[d] and assist[ed] such claimants in the presentation of their cases."

60. Congress does not believe it has granted plenary authority to the IRS to regulate all tax preparers under 31 U.S.C. § 330. Instead, Congress has passed specific statutes governing the regulation of tax preparers in specific, and limited, circumstances. For example, in 2004, in order to authorize the IRS to regulate the provision of tax shelter advice, Congress specifically amended 31 U.S.C. § 330, adding subpart (d), which clarifies the authority of the Secretary of the Treasury to impose standards on written advice of a type which the Secretary determines as

having a potential for tax avoidance or evasion. Similarly, Congress also found it necessary to give specific statutory authorization to the IRS to permit the use of PTINs by tax preparers. *See* 26 U.S.C. § 6109(a)(4). If Congress had thought that it had given the IRS plenary power to regulate tax preparers, it would not have needed to pass these specific statutory provisions.

61. Recently, Congress has also considered amending 31 U.S.C. § 330(a)(1) to specifically include granting authority to the Department of Treasury to regulate tax return preparers. *See, e.g.*, Taxpayer Bill of Rights Act of 2008, H.R. 5716, 110th Cong. § 4(a) (2008) (“Section 330(a)(1) of title 31, United States Code, is amended by inserting ‘(including tax return preparers of Federal tax returns, documents, and other submissions)’ after ‘representatives.’”); Taxpayer Protection and Assistance Act of 2007, S. 1219, 110<sup>th</sup> Cong. § 4(a) (2007). Such an amendment would not be necessary if the IRS were already authorized to regulate all tax return preparers under the existing language of 31 U.S.C. § 330.

#### **Plaintiff Sabina Loving**

62. Plaintiff Sabina Loving owns and operates Loving Tax Services, Inc., a tax preparation business at 6054 South Eberhart Avenue in Chicago, Illinois.

63. Plaintiff Loving lives in and operates her tax preparation business in an economically depressed neighborhood on the South Side of Chicago where there is high unemployment and many homes and businesses are boarded up. The storefront in which her business is located had been closed for at least the preceding twelve years before she opened her business there.

64. Plaintiff Loving is a graduate of Robert Morris College, holds a Master’s degree from Roosevelt University, and is a member of the American Institute of Professional Bookkeepers. She has worked full-time as an accountant for major banks and financial services

companies for approximately twelve years. She has been preparing taxes professionally for the past three years. She is not an attorney, CPA, or any type of enrolled agent or actuary. She has a provisional PTIN.

65. Plaintiff Loving expects to prepare more than 100 tax returns for clients in the 2012 tax season.

66. Plaintiff Loving is the only tax return preparer at her business, but also has three employees who assist with data entry and administrative tasks.

67. Plaintiff Loving wants to hire additional employees as tax preparers under her supervision. But she cannot do so because the new IRS licensing scheme does not permit her to supervise other preparers since she is not an attorney, CPA, or any type of enrolled agent or actuary, and her business is not a law firm, CPA firm, or a recognized firm 80% owned by attorneys, CPAs, or any type of enrolled agent or actuary.

68. Plaintiff Loving serves many low-income clients from the surrounding community, which is quite impoverished.

69. Plaintiff Loving prides herself on offering more affordable tax preparation services than major tax preparation firms and objects to the costs imposed on her and her business by these licensing regulations, which will force her to raise the tax preparation fees she charges her customers. Raising her fees will result in her losing current and potential customers.

70. Plaintiff Loving also objects on principle to regulations such as this new IRS licensing scheme that are unfairly burdensome on small businesses like hers, but which provide exemptions for powerful interests that had the resources to lobby for these exemptions.

### **Plaintiff Elmer Kilian**

71. Plaintiff Elmer Kilian owns and operates Eagle Tax Services out of his home in Eagle, Wisconsin.

72. Plaintiff Kilian retired from working for the Wisconsin Weights and Measures Office approximately 20 years ago. He has lived in the small village of Eagle for nearly 50 years and is a United States Marine Corps veteran who served in the Korean War.

73. Plaintiff Kilian has been preparing taxes seasonally and part-time for about 30 years on his dining room table. He began preparing taxes on a part-time basis after studying to become a bookkeeper at a vocational school. He has applied for a provisional PTIN.

74. Plaintiff Kilian has a wooden shingle hanging outside his house on Main Street in Eagle, Wisconsin that advertises his tax preparation services, but he mostly serves longtime customers who have sought his help in preparing their taxes for decades.

75. Plaintiff Kilian prides himself on providing low-cost tax preparation services to the residents of Eagle and nearby communities, and even prepares a number of returns for free for charitable reasons. He objects to the costs imposed on him by this IRS licensing scheme, which would force him to either substantially raise the tax preparation fees he charges his customers or go out of business altogether. Since he is not willing to substantially raise the rates he charges his longtime customers, he plans to close his tax business rather than comply with these new IRS licensing regulations.

76. While he is concerned about the cost of preparing for and taking the competency exam, Plaintiff Kilian is most concerned about the ongoing, annual costs of complying with the continuing education requirements, which he anticipates will be several hundred dollars and two



days of his time, as well as the time and cost of travel, lodging, and meals. These costs would be in addition to the annual PTIN renewal fee of more than \$60 per year.

### **Plaintiff John Gambino**

77. Plaintiff John Gambino is a Certified Financial Planner™ (CFP®) professional and a registered investment advisor representative in Hoboken, NJ who works primarily on assisting his clients with wealth management. His legal name is Giovanni Gambino, but he goes by John with most clients and friends.

78. Plaintiff Gambino also offers tax return preparation as a convenient service for his clients, and has done so since 2004. He prepares approximately 50 tax returns for compensation annually. He has a provisional PTIN.

79. Plaintiff Gambino owns and operates Inner Circle Platinum Advisors LLC and Inner Circle Advisors LLC from his home office. Inner Circle Platinum Advisors is registered in Delaware and New Jersey as an LLC; the firm is a registered investment advisor and Plaintiff Gambino is a registered representative of the firm. Inner Circle Advisors is his tax preparation business, which is registered as an LLC in Florida.

80. Plaintiff Gambino holds bachelor's and master's degrees from the Massachusetts Institute of Technology. He worked on Wall Street from 2001-2003 as an equity analyst for a hedge fund. He has passed the two-day CFP® examination and must complete 30 hours of continuing education courses (including two hours of ethics education) every two years to maintain his CFP® certification.

81. Plaintiff Gambino is bilingual, speaking English and Spanish fluently. He also speaks Italian conversationally. In addition to preparing tax returns for English-speaking clients,

he also prepares tax returns for clients who speak Spanish, Italian, and Portuguese as their primary language.

82. Plaintiff Gambino objects on principle to the new IRS licensing regulations for tax preparers. He believes they are an unconstitutional infringement on his economic liberty to earn an honest living free from unreasonable and irrational government intrusion. He also objects because, although the stated purpose of this licensing scheme is to protect consumers, it will actually harm consumers by reducing choice in tax preparers and increasing the cost of tax preparation, while benefiting the protected classes of lawyers, CPAs, enrolled agents, and large tax preparation businesses.

83. Because of both his moral objections to the IRS licensing regulations, and the monetary and opportunity cost of compliance, Plaintiff Gambino has stopped taking new tax clients and plans to stop preparing taxes for his clients rather than comply with the new licensing scheme, closing his tax preparation business by the end of December 2013.

### **INJURY TO PLAINTIFFS**

84. Without being licensed by Defendants as “registered tax return preparers,” Plaintiffs will be unable to prepare taxes for compensation, depriving them of income.

85. Defendants’ regulations threaten Plaintiffs with fines and other sanctions if they continue preparing tax returns for compensation without complying with the various licensing requirements to be “registered tax return preparers.”

86. Defendants' requirement that Plaintiffs become licensed as “registered tax return preparers” in order to continue preparing taxes for compensation is causing and will continue to cause ongoing and irreparable harm to Plaintiffs in the form of lost time and compliance costs.

87. In order to obtain and maintain the status of “registered tax return preparer,” Plaintiffs would be forced to pay a substantial amount of money in application fees, exam fees, continuing education course fees, as well as potential travel costs, lodging, and meals related to taking the competency exam and continuing education courses.

88. In order to obtain and maintain the status of “registered tax return preparer,” Plaintiffs would be forced to spend a substantial amount of their time filling out the appropriate forms, studying for the competency examination, taking the competency examination, attending continuing education courses, and travelling to and from the exam and continuing education courses. This imposes substantial opportunity costs on Plaintiffs.

89. The additional monetary costs of compliance with these new licensing regulations, as well as the substantial opportunity cost of the time spent satisfying the licensing requirements, will force Plaintiffs to either charge higher prices to their customers in order to remain profitable, or to exit the business of tax preparation.

90. While Plaintiffs do not have to pass the competency exam until December 31, 2013, the continuing education requirement becomes effective this year. This will impose substantial monetary and opportunity costs on Plaintiffs.

91. In addition, while Plaintiffs are required to pass a written examination, the score required to pass this exam is unspecified and unknown to them. Ensuring that they are able to pass the exam would require them to devote a significant amount of time to reviewing the IRS's recommended study materials for this examination—again, imposing substantial opportunity costs on Plaintiffs.

92. The monetary cost, time, effort, and opportunity cost of complying with these new regulations will force Plaintiff Loving to raise the prices she charges her customers, which

will make her less competitive with major tax preparation firms that are largely exempt from these regulations. This will harm her tax preparation business because she will lose current and potential customers if forced to raise her prices.

93. But for these new licensing regulations, Plaintiff Loving would hire employees as tax return preparers under her supervision. This would have increased the number of customers that her business can serve and expanded her market share. Instead, she is not permitted to supervise other preparers under the new regulations, while many of her competitors at CPA firms, law firms and “recognized firms” have an exemption that permits them to supervise unlicensed preparers. This has harmed her tax preparation business.

94. The monetary cost, time, effort, and opportunity cost of complying with these new regulations would force Plaintiff Kilian to substantially raise the price he would have to charge his clients in order to remain profitable. He cannot do so in good conscience, and will be forced to close his tax preparation business.

95. The monetary cost, time, effort, and opportunity cost of complying with these new regulations will make it unprofitable for Plaintiff Gambino to continue preparing taxes for clients. He has already stopped taking new tax clients, and will eventually stop preparing taxes for clients and close his tax preparation business if he is forced to comply with these regulations.

96. The new IRS licensing scheme is unnecessary to ensure that Plaintiffs are competent to prepare tax returns. Plaintiffs are already subject to numerous civil and criminal statutes governing tax return preparation. Plaintiffs are also required to register for and obtain PTINs in order to prepare federal tax returns, enabling the IRS to keep track of all tax returns they prepare. Plaintiffs also must remain competent in order to keep the business of their customers, who would take their business elsewhere if frequently subject to tax return

corrections or audits. Plaintiffs have each been preparing tax returns for several years and have not been subject to any discipline for violations of any laws or regulations, nor have they had any known customer complaints to the IRS.

### **CAUSE OF ACTION**

97. All preceding allegations are incorporated here as if set forth in full.

98. The IRS licensing scheme for “registered tax return preparers” described above exceeds the statutory authority the IRS has to regulate the presentation of cases by representatives of persons before the Department of Treasury under 31 U.S.C. § 330 and is therefore invalid.

99. Unless Defendant is enjoined from enforcing the IRS licensing scheme for “registered tax return preparers” as described in Circular 230 (Rev. 8-2011), 31 C.F.R. Part 10, Plaintiffs will suffer continuing and irreparable harm.

### **REQUEST FOR RELIEF**

Therefore, Plaintiffs respectfully request the following relief:

A. A declaratory judgment by the Court that the IRS is without statutory authority to enact, promulgate or enforce the IRS licensing scheme for “registered tax return preparers” as described in Circular 230 (Rev. 8-2011), 31 C.F.R. Part 10;


B. A permanent injunction prohibiting Defendants or their agents from enforcing the IRS licensing scheme for “registered tax return preparers” as described in Circular 230 (Rev. 8-2011), 31 C.F.R. Part 10;

C. An award of attorneys’ fees, costs, and expenses in this action; and

D. Any other legal or equitable relief to which the Plaintiffs may show themselves to be justly entitled.

Dated: March 13, 2012.

Respectfully submitted,



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William H. Mellor (DC Bar No. 462072)

Scott G. Bullock (DC Bar No. 442379)

(*Pro Hac Vice* application to be filed)

Dan Alban (DC Bar No. 978051)

INSTITUTE FOR JUSTICE

901 N. Glebe Road, Suite 900

Arlington, VA 22203

Tel: (703) 682-9320

Fax: (703) 682-9321

Email: [wmellor@ij.org](mailto:wmellor@ij.org); [sbullock@ij.org](mailto:sbullock@ij.org); [dalban@ij.org](mailto:dalban@ij.org)