LIBERTY TREE

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RPO: INTIMIDATING WITHOUT LICENSE

It took years, but the IRS finally gained Lawful authority to regulate tax return preparers. Or did it?

Remember the IRS Restructuring and Reform Act of 1998 (RRA)? Congress passed it after many hearings exposing the illegal actions of the IRS. It was touted as a congressional solution to curb the IRS' wild 'cowboy' days and make the agency conform to new 'due process' requirements. Ostensibly, this would protect the people from IRS abuse; in reality, new provisions to extend IRS power were introduced. As time has shown, the new requirements for due process were mere bandaids for the people; IRS counsel quickly provided 'legal' rationales to deny even those remedies.

Sometimes, however, the IRS succeeds in turning a Congressional remedy into an attack on liberty. Such is the case with the "Return Preparer Office" of the IRS and the new regulations that every tax return preparer have a license from the IRS to prepare other people's returns for them is just such a betrayal.

We'll start from the beginning, so we can trace how an out-of-control agency writes its own regulations without any basis in law — in essence, unconstitutionally writing its own legislation for itself.

So, back to the RRA. In 1997, Section 6109(a)(4) of the IRC required that "Any return or claim for refund prepared by an income tax return preparer shall bear such identifying number for securing proper identification of such preparer, his employer, or both, as may be prescribed." Section 6109(a), however, also stated that such number "shall be such individual's social security account number."

With the RRA in 1998, however, Congress amended Section 6109(a) to remove the requirement that a tax return preparer's number be the SSN, leaving the number now up to the IRS to prescribe via regulations. The change was made because the Senate Committee on Finance was "concerned that inappropriate use might be made of a preparer's social security number," and therefore, the IRS was now authorized "to approve alternatives to Social Security numbers to identify tax return preparers."[1] The *stated intent* of Congress for the change, then, was ***protection*** of the SSN of the return preparer, apparently so preparers would be less vulnerable to identity theft.[2]

Notice that Congress did not mandate that the IRS prescribe a number other than the SSN; it just allowed the IRS to prescribe a number.

Apparently following the Congressional intent, in

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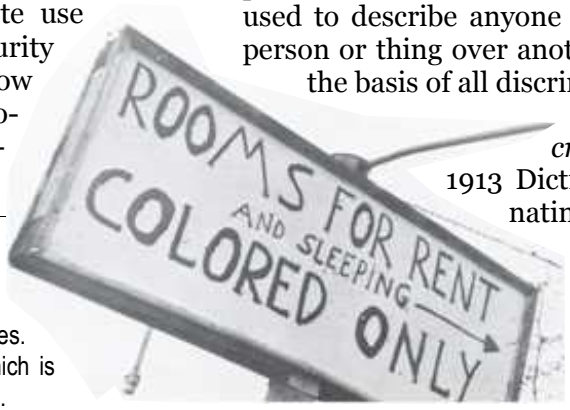
By Dick Greb

I recently came across an internet article arguing that Libertarians are racists because they are opposed to using government to force people not to discriminate against other races. And since the Libertarian philosophy is that all initiation of force is immoral, the same must also apply to laws prohibiting discrimination against any individual, group, or class of people, thus also making them sexists, homophobes, anti-Semites, and all the other derogatory names used to describe anyone who would dare to prefer one person or thing over another. Because at bottom, that is the basis of all discrimination.



One of the definitions of *discrimination* given in Webster's 1913 Dictionary is "The act of discriminating, distinguishing, or noting and marking differences." So while discrimination is typically thought of and decried as being a terrible thing, it is a natural fact of life that cannot

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1. Senate Report 105-174, p. 106.
2. "Identity theft" is actually a misnomer. No one can steal one's identity, they just misuse numbers which are applied by the government to its own files. For example, Obama apparently uses an SSN which is assigned by the government to someone else's files.

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August, 2002, the IRS published its final regulations to "allow income tax return preparers to elect an alternative to their social security number for purposes of identifying themselves on returns." The IRS explained that the RRA had removed the limitation of a return preparer number being the SSN, and noted that "the Secretary may prescribe alternatives to the social security account number for purposes of identifying individual preparers."[3]

Accordingly, 26 CFR 1.6109-2 (a)(2) was amended so that a preparer could use their SSN, "or such alternative number as may be prescribed by the Internal Revenue Service in forms, instructions, or other appropriate guidance." The preparer's employer was instructed to use its EIN as the prescribed number, and the IRS developed Form W7P as an individual's application for the PTIN; it requested only a name, address, SSN, date of birth and signature.

So now, tax *preparers* had been protected by Congress, right? Except ...

'Protect' the poor taxpayers

In 2002, the same year the IRS published its final regulations regarding the preparer's tax id number (PTIN), the IRS' own National Taxpayer Advocate, Nina Olson (NTA), was busy making "key recommendations" to Congress for future legislation.[4] One of them was related to the "problem" taxpayers face annually:

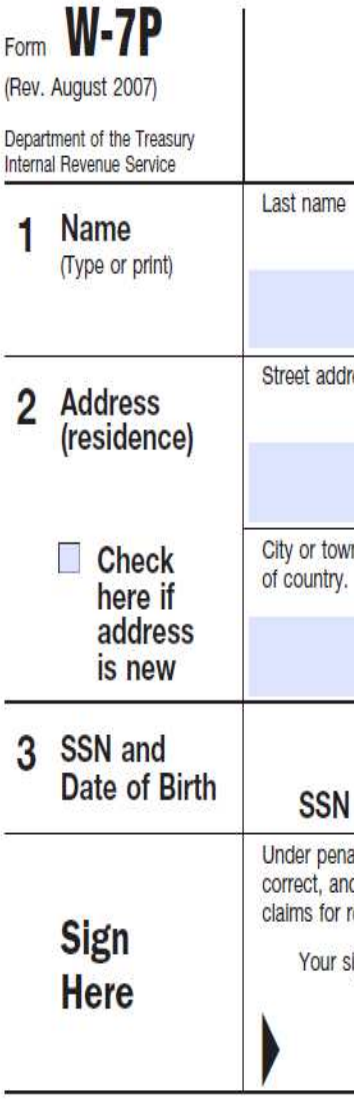
[The tax filing season] generates anxiety and frustration as they set out to fulfill their tax obligations. They are faced with a complex set of tax laws and a multitude of requirements for deductions, exemptions, and credits. Frequent tax law changes compound their confusion and concern.

Sounds like a good reason to end the system once and for all. But, alas, the parasitic NTA would never recommend *that*. The report continues:

> [The frustrated] taxpaying public — over fifty percent — pay a tax return preparer to complete their income tax returns. Many tax preparers are not required to meet minimum standards of competency. Taxpayers are ill equipped to assess the competency of someone's expertise in an area in which they have limited knowledge themselves.

And horror of horrors, the NTA noted that ***anyone***, "regardless of ... training, experience, skill or knowledge, is able to prepare federal tax returns for others for a fee."[5]

Governmental parasites cannot allow their con game to be undermined by such freedoms. The taxpayer must continue to be "confident" in their tax preparers — and never forget that "compliance" — *i.e.,* getting more money from the people — must "be improved," said the NTA.[6] So it recommended that Congress enact a "registration, examination, certification, and enforcement program for Federal Tax Return Preparers" (FRTPs). FRTPs would be people who weren't attorneys, CPAs, or enrolled agents (the elite), but who prepared more than five federal tax returns for a fee annually. The IRS should be authorized to register them, examine them on their technical knowledge every single year, impose a per-return penalty for unregistered preparers or preparers who failed to take or pass the examinations, and run a publicity campaign to tell the public never to use a tax preparer who doesn't have an FRTP registration card.


Form **W-7P**
(Rev. August 2007)
Department of the Treasury
Internal Revenue Service
1 Name (Type or print) — Last name
2 Address (residence) — Street addr
Check here if address is new — City or town of country.
3 SSN and Date of Birth — SSN
Sign Here — Under pena correct, and claims for r — Your si

The form W-7P was a simple application for an alternate tax return preparer number.

Indeed, the only thing missing from the NTA recommendations, it seems, was a proposal that Congress should also penalize taxpayers who use a non-registered preparer. But perhaps that would have made the claim that 'it's all for the poor frustrated taxpayer' seem a little less sincere.

Pushing the bills again and again

The NTA of the IRS, it appears, had such legislation prepared and ready, because a scant three months later, on March 21, 2003, Sen. Jeff Bingamen (D-NM) introduced such a bill as S. 685. One year later, on March 17, 2004, the same bill was introduced as H.R.

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3. Federal Register, August 14, 2002 (Vol. 67, No. 157), p. 52863.
4. Under the authority of IRC § 7803(c)(3)(B)(viii).
5. All quotes from the FY 2002 Annual Report of the National Taxpayer Advocate.
6. The NTA examples given of the "harm" that can come to taxpayers were ridiculously self-serving; they all involved situations in which an audit later revealed that mistakes had been made, and more taxes were due. The NTA claimed that this resulted in higher bills that the taxpayers had no means to pay, or had to pay via installments. But if the returns had been completed 'correctly' in the first instance, they would have resulted in higher taxes at that time, meaning that the taxpayers involved would still have had no means to pay or would have had to pay in installments. Who, then is causing the harm to the taxpayers? The law and the regulations of the IRS, or the preparers 'mistakes'?

Scheming parasites and tyrants seeking to put all tax return preparers under the direct control of the IRS, clockwise from top left: National Taxpayer Advocate Nina Olson, Sen. Jeff Bingamen, Rep. Xavier Becerra, and Commissioner Doug Shulman.

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3983 by Rep. Xavier Becerra (D-CA). The dutifully introduced bills were titled "The Low Income Taxpayer Protection Act," but failed to gain any traction in Congress; both were simply referred to committee.

So on April 25, 2007, IRS tool Bingamen introduced the preparer licensing legislation once again as S. 1219, with a similar Orwellian name, "The Taxpayer Protection and Assistance Act. By April 7, 2008, IRS watercarrier Becerra introduced an even more verbose and involved version of this Act as H.R. 5716. Both bills had more cosponsors than before; still, neither bill advanced from committee.

These repeated attempts at legislation contain a clue to the IRS scheme for obtaining authority from Congress to license tax preparers. Section 4, "Regulation of Federal Income Tax Return Preparers," of Becerra's H. R. 5716, stated in part:

> (a) In General- 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'. (emphasis added)

The law Becerra attempted to amend, Section 300(a)(1) of U.S.C. title 31, allows the IRS to regulate "representatives of persons" who have audit or appeal cases before the IRS. The codified statute, passed in 1982, currently states:

> (a) Subject to section 500 of title 5, the Secretary of the Treasury may -
> (1) regulate the practice of representatives of persons before the Department of the Treasury; and
> (2) before admitting a representative to practice, require that the representative demonstrate - (A) good character; (B) good reputation; (C) necessary qualifications to enable the representative to provide to persons valuable service; and (D) competency to advise and assist persons in presenting their cases.

The Office of Law Revision Counsel[7] substituted the words "representatives of persons" for "agents, attorneys, or other persons representing claimants before his department," the words that had appeared in the statute passed by Congress and more closely indicate the intent of the law.

Meanwhile, Section 500 of U.S.C. title 5, under Chapter 5, "Administrative Procedure," mentioned in 31 U.S.C. § 300(a) above, specifically authorizes attorneys and CPAs to represent persons in IRS matters. While it does not "deny" other persons "the right to appear for or represent a person before an agency," it also "does not prevent" an agency from requiring a power of attorney in the settlement of controversies involving payments of money.

Still no law to regulate return preparers

Abundantly clear in all the legislation cited above is that none of it authorizes the IRS to regulate tax preparers as "representatives of persons."

Instead, the legislative language refers to IRS matters where a person gives someone else power of attorney to represent them, such as SAPF members previously gave Fellowship fiduciary John B. Kotmair. In fact, a tax return preparer, unless simultaneously a lawyer, CPA or enrolled agent, *cannot* be a representative of any person unless they are able to be designated as power of attorney under Circular 230,§ 10.7(c).[8]

The stark fact that Bingamen and Beccera's bills contained explicit language to *amend* the existing statutes to *include* tax return preparers shows that the IRS, the NTA, and the legislators all understand that the IRS has *no power* to regulate tax return preparers.

Since the legislative goal of extending IRS regulatory authority to tax return preparers has not been met, what was Commissioner Doug Shulman going on about, when he stated, at a Committee on Ways and Means hearing June 4, 2009, that he planned to deliver to Obama a "comprehensive" set of "recommendations on how to better leverage the tax return preparer community to increase taxpayer compliance"?[9] He meant the IRS considered it time to make an end-run around Congress and seize control (unconstitutionally) of licensing return preparers. This process is now nearly complete; in the next issue, *how* the IRS did it.

7. Responsible for revising the Code from the public laws passed by Congress.
8. See the 4-2008 revision of Circular 230, which contains the regulations for representation before the IRS, at www.irs.gov/pub/irs-utl/circular_230.pdf.
9. See text at www.gpo.gov/fdsys/pkg/CHRG-111hhrg62997/html/CHRG-111hhrg62997.htm

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be avoided. Every aspect of our lives demands that distinctions must be discerned, factors must be weighed, and ultimately that decisions must be made. The value that any person places on the various factors is purely a personal matter, and should not, indeed cannot, be any other way. Everything you buy, wear, eat, watch, visit, and do will depend on your personal tastes and the options available to you, which is as it should be. I like Chevys, you like Fords. You want meat loaf and mashed potatoes for dinner on Friday nights, and I prefer soup and a salad. It would make no sense to argue with me that meat loaf tastes better than salad, or soup should only be eaten on Saturdays. Each of us has our own preferences, and as the cliché says, there's no accounting for taste.

Nobody would deny that it would be ridiculously intrusive and oppressive if Congress enacted a law prohibiting the consumption of chicken on Tuesdays or mandating that only red cars could be sold. Using the force of government that way is inherently unjust, because it elevates the interests of some citizens (those who prefer red cars) over the interests of all the rest. And since our government, as a common agent of all citizens, owes a fiduciary duty to each of its principals to equally protect their interests, it would violate that duty to discriminate between us. And that type of discrimination is the only type with which government can rightly be concerned. Government is obligated to represent us equally and so every legal distinction it creates for the purpose of preferring one or another of us in its legislation violates that fiduciary obligation.

Yet, while the principle of equal protection of the laws and the fiduciary relationship of the government forbid it from discriminating between the citizens, there is no justification for government to prohibit discrimination on any basis by the citizens themselves. The Declaration of Independence recognizes our inalienable right to pursue happiness, including the freedom to associate with whomever we please. At the same time, we are equally free to *refrain* from associating with anyone we please. It matters not whether our reasons for either are rational or not, or whether we even have reasons. It's enough that it's what pleases us, and nobody has the right to force us to do otherwise.

Our right to property is another of the inalienable rights cited in the Declaration of Independence, and so the same principle applies. We can buy, keep, sell or use our own property any way we see fit, as long as we don't violate the equal rights of everyone else in the process. So the question is, does my refusal to use my property in a way which benefits you violate your rights? Of course not! You have no *right* to the use of my property, nor to control the manner in which I exercise my rights in it. So, if I don't want to sell my property to you, your rights are not violated. It matters not that I am willing to sell it to someone else, or even to anyone else but you; I have not infringed your rights in any way. On the other hand, if government forces me to sell it to you against my wishes, then my rights to my property *are* infringed.

And so it is with all legislation that purports to curb discrimination. In order to "right" a non-existent "wrong" the government implements an *actual* wrong. To stop discrimination, it institutionalizes discrimination, albeit against someone else. It's wrong to discriminate against someone because of their sexual orientation, but it's fine to discriminate against someone who does. Ultimately, property owners become the ones discriminated against, but don't expect the black-robed liberty thieves to come to their rescue. In ruling that the "public accommodations" provisions of the Civil Rights Act of 1964[1] was constitutional, the Supreme Court said:

> It is doubtful if, in the long run, appellant will suffer economic loss as a result of the Act. Experience is to the contrary where discrimination is completely obliterated as to all public accommodations. **But whether this be true or not is of no consequence, since this Court has specifically held that the fact that a "member of the class which is regulated may suffer economic losses not shared by others . . . has never been a barrier" to such legislation.** Likewise, in a long line of cases, this Court has rejected the claim that the prohibition of racial discrimination in public accommodations interferes with personal liberty. (*Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964) (internal citation omitted))

As years go by, the list of "protected classes" gets longer and longer, and our individual rights of property and association are whittled away. As always happens when the coercive force of government elevates the interests of some individual or group over the rest, more and more such groups wrestle over control of the machinery, so they might be the next ones to benefit at the expense of others. The reason the Constitution grants such a narrow range of powers to the federal government is because there are so few that can be exercised to equal benefit of all citizens. So, whenever government strays beyond those limited powers, it must invariably discriminate against some of us, and eventually against all of us. Only when it stays within its proper bounds can we really enjoy the equal protection of the laws.

1. As has been the case with so much of the usurpation of power by the federal government, the claim of authority to prohibit discrimination in places of "public accommodation" through the Civil Rights Act of 1964 was the commerce clause of the Constitution. Apparently this was because the provision in an 1875 version of the act that tried to do the same thing based on the 14th Amendment was shot down by the Supreme Court. See Civil Rights Cases, 109 U.S. 3 (1883).