

Court Strikes Down IRS Tax Return Preparer Regulations

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In *Loving v. IRS*, Civ. A. No. 12-385 (D.D.C. 2013), the District Court for the District of Columbia struck down the IRS's 2011 tax return preparer regulations (T.D. 9527, 2011-2 C.B. 1 (Jun. 3, 2011)). The regulations require non-attorney, non-CPA tax return preparers to pass a qualifying exam, pay an annual application fee, and take 15 hours of continuing education courses each year. The court analyzed the regulations under the familiar 2-step *Chevron* test, concluding at Step 1 that the statutory text and context of 31 U.S.C. § 330 unambiguously foreclosed the IRS's interpretation that the statute authorized the preparer regulations.

The IRS attempted to draw its authority from § 330(a)(1), which authorizes the Secretary to "regulate the practice of representatives" before the Treasury Department. The IRS argued that this authority includes the authority to regulate tax return preparers, since they are "representatives" who "practice" before the IRS. The IRS noted that the statute does not define the term "practice" or "representatives," and both terms can have broad meanings.

The court rejected the IRS argument as "simplistic." The court looked to the context in which these terms appear in other sections of the statute, noting that under § 330(a)(2)(D), before admitting a "representative" to "practice," the Secretary may require that the representative demonstrate competency "to advise and assist persons in presenting their cases." By equating "practice" with the presentation of "cases," the court stated, the statute strongly suggests that "practice" does not include the filing of tax returns. Filing a tax return would never in normal usage be described as "presenting a case."

The court also drew guidance from several Internal Revenue Code sections imposing penalties on tax return preparers. "It is a fundamental canon of statutory construction," stated the court, "that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." Sections 6694, 6695, 6713, and 7216 each impose specific fines and penalties for specifically

identified misconduct by return preparers. If one accepted the IRS's interpretation, 31 U.S.C. § 330(b) would give the IRS far broader discretion to impose virtually any penalty it chose on return preparers, trampling the detailed and specific penalty scheme enacted by Congress.

For these reasons, the court held that the statutory text and context unambiguously foreclosed the IRS's interpretation. It granted the taxpayers' motion for summary judgment, permanently enjoining the IRS from enforcing the return preparer regulations.

Loving provides helpful reassurance that the IRS's authority to issue regulations, while broad, is still constrained by the statutes that Congress enacts. Courts will review the statutory context in which a particular term appears before concluding that the term is "ambiguous" and that the IRS is authorized to issue regulations defining the term.

The *Loving* case is available on the [District Court's website](#).

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