

IRS Relies on Rule from 1800s to Justify Tax Preparer Regulations

by Joseph M. Donegan on October 9, 2013

The Internal Revenue Service is pulling out all the stops to support a set of proposed rules that would allow it to better regulate tax preparers, as evidenced by its use of a long-forgotten law from the 1800s to justify its argument.

At an appellate court hearing challenging the IRS tax law, Justice Department representative Gilbert Rothenberg cited the "Horse Act of 1884" as a governing piece of legislation that authorizes the IRS to regulate thousands of independent tax preparers, according to Reuters. Rothenberg explained that in the years following the Civil War, many Americans submitted war loss claims to the government for lost or missing horses. This led to the emergence of unregulated agents who would represent and lobby for these individuals for a fee. Over time, many agents began inflating both claim values and fees, which led to the government passing legislation to regulate intermediaries, Rothenberg concluded.

He explained that this scenario largely mirrors what could occur in present time if tax preparers are permitted to work without government oversight or be required to pass a competency test and take annual continuing education classes. However, the Institute for Justice, which opposes the IRS law, argued that "representatives" and "service providers" do not fall under the same classification, and that tax preparers merely provide a paid service to clients.

"Preparing a tax return is not a representative act," said Dan Alban, a representative for the institute, according to Reuters. "It is performing a service, certainly, but there's no representation."

The three appellate judges hearing the case seemed to agree, and peppered Rothenberg with questions about the scope and history of this law, according to Politico. However, the court is not expected to reach a ruling for some time, as arguments over whether independent tax preparers should face stricter regulations will continue for the next several months.