

## **Enrolled Agents Must Register With The State, But Help Is On The Way**

The NYS legislation seeking to balance it's out of control budget chose to turn Enrolled Agents into a source of revenue by including in the recently enacted Budget Bill a provision, Section 32 of the New York State Tax Law, which requires Enrolled Agents and their employees who prepare NYS tax returns to register with the NYS Department of Taxation and Finance and pay an annual \$100 registration fee. The legislation also requires the Tax Department to convene a task force for the purpose of making recommendations to regulate "tax return preparers" which now includes Enrolled Agents in that unenviable category. The report is due by March 31, 2012. Based on those recommendations the Commissioner is empowered to promulgate regulations governing the behavior and qualifications among other issues regarding "tax return preparers"

CPAs and attorneys are exempted from registration. The forces sponsoring this legislation somehow believed that Enrolled Agents being no better than any unlicensed backstreet tax return preparer or refund mill operator should not, along with CPAs and attorneys, be exempt from registration.

Your society did not take this turn of events lying down. Despite this committee's lobbying efforts which regrettably were unsuccessful your society is confronting the new law on two fronts.

Assemblyman, David G. McDonough (R), 19th Assembly District, L.I., at the urging of William Stevenson, EA (Merrick, NY – Nassau/ Suffolk Chapter) is about to introduce corrective legislation. The membership will be advised of the bill number so they can write their state Senator and Assembly member urging their support, and the firm of McDermott Will & Emery in Manhattan was engaged to start an action in NYS Supreme Court, NY County to have the law declared unconstitutional. The basis for the lawsuit is the constitutional doctrine enunciated in *Sperry v. Florida*, 373 U.S. Supreme Court 379 (1963).

In *Sperry* the U.S. Supreme Court clearly and unambiguously ruled that a state:

"may not enforce licensing requirements which, though valid in the absence of federal regulation, give 'the State's licensing board a virtual power of review over the federal determination' that a person or agency is qualified and entitled to perform certain functions, or which impose upon the performance of activity sanctioned by the federal license additional conditions not contemplated by Congress."

The summons and complaint have been prepared. Prior to commencing the litigation copies were sent to the Asst. Commissioner and Counsel to the tax department in Albany in an effort get them on board in support of the corrective legislation. If this cannot be accomplished we will commence legal action.

The NYSSEA Web Site and special emails will keep you apprised of our progress and of the help you can offer which is desperately needed.

David J. Silverman, EA,

Chairman, Government Relations Committee