Good Afternoon. My name is Richard Ernst and I'm the Deputy Commissioner in the New York State Department of Taxation and Finance's Office of Professional Responsibility. My job is to regulate, train and unfortunately have to discipline 45,000 New York State registered tax return preparers. Now the topic that I'm going to be discussing with you today is called Standards of Conduct and Penalties for Tax Return Preparers.

You know, every time I give this speech, I feel bad that that's the title of it because my goal is to point out to you what the Standards of Conduct are so that we will never have to deal with the penalties. But I think it's important that you understand not only what the expected Standards of Conduct are but also what the potential penalties may be.

Now all of you prepare tax returns for clients. I'm sure you understand what an easy job this is. Your clients come to you. All their records are in perfect shape. Everything that you can possibly need to prepare the tax return is given to you on a silver platter. All the documents are there. They're all in a nice form. All the items that they have that need to be deducted from their taxes are provided for you so that all that you have to do is take out your calculator, add up the income and other additions, subtract any deductions and any credits, either e-file the ultimate return or file on paper and go home happy.

I'm sure you know that's not the way it happens. Preparing tax returns is not as easy as I describe. And the job that you provide to the taxpayers of New York State is a very important one. And this was crystallized in a brief that was filed in a federal court by five former Internal Revenue Service Tax Commissioners in a case that was called the Loving Case. And this dealt with the IRS's registered tax return preparer program.

These five former commissioners advocated that it was important that the IRS be able to regulate tax return preparers and in this brief they said "The concept of a tax return as an annual bookkeeping function, with the tax return preparer acting as a bookkeeper, is an anachronism that has been fully displaced by the sweeping public policy goals of government assistance programs now administered through the modern federal income tax system."

"Given the content and scope of the modern Internal Revenue Code, a tax return preparer is no longer merely poring over a box of receipts in green eyeshades (if such a caricature ever described the full role of the tax return preparer)."

“Instead, the preparer must explore with taxpayer-clients critical issues such as health care, child care, family relationships, education goals, home ownership, charitable giving, saving for retirement, and any number of other public policy goals that Congress has decided to address through the Internal Revenue Code.”

As we can see by the brief that was filed by the Tax Commissioners, the modern tax system has really evolved from what it used to be. And through some of the other programs, you can see that the tax return preparer has to deal with many complex issues for example the Affordable Care Act. And also, the role the tax return preparer serves many important functions in every taxpayer’s life.

If you look at the number of people that used paid tax preparers in New York State during the last filing season, 69% of all taxpayers used paid tax return preparers. I’m sure that if you think about other groups of people that we may consider to be, quote unquote, “professionals”, such as doctors, such as lawyers, such as dentists, 69% of all the citizens of New York State do not go to one of those three groups of people in an average year. So, more people use tax return preparers than may go, in an average, paid tax return preparers, than may go to one of those other professional groups in a year.

And you also have to look at the purpose of the modern tax system. We all know that one of the prime focuses is to bring in money to pay for buildings, to pay for roads, to pay for schools, on the federal level to pay for the military, and for Medicare and Medicaid. But one of the other and maybe more important functions of the tax system is to pay money out to those people who need a little more assistance from the government either long term or temporarily. So if you think about the number of people that have claimed the most common credit, the Earned Income Tax Credit, during the last filing season, 76% - more than three-quarters - of all New York State taxpayers that claimed the Earned Income Tax Credit used a paid preparer. And the amount of money that this credit represents is almost one billion dollars. So the paid tax preparer is assisting New York State in paying out a vast sum of money.

Now, up to now the profession of tax preparation has been unregulated. Let’s look at some other groups of people that New York State has regulated prior to this time. New York presently regulates over 80 professions. Among those are athletic trainers, certified shorthand reporters, interior designers, massage therapist, notary publics, real estate sale people, cosmetologists, a nail specialist needs to take a 250 hour course before they can practice their craft, a document destruction contractor, a barber needs to do a two year apprenticeship before they can be licensed, a telemarketer and a ticket reseller.

So prior to this time, all of these businesses have been regulated by New York State. And I'm not trying to diminish the importance of these particular businesses but no one will argue that the services that they provide are any less important than the services that a paid tax return preparer provides their client. In addition, think about the most important piece of information that any person has: their social security number.

I don't know how many of you saw the 60 Minutes report a couple of weeks ago but in that report they showed some gentlemen in Florida who, before they have their first cup of coffee in the morning or get out of their night clothes, get on their computers and file fraudulent returns with all fifty states. If they're able to collect on only a small portion of their false filings, they're able to collect tens of thousands of dollars. And the way this is allowed to occur is through the use of stolen social security numbers or purchasing security numbers from other people. Identity Theft; that is something that's a huge problem both on the federal level and on the state level. And you, as tax return preparers, you have access to your clients' social security numbers.

There was also a demand for change that was driven by the people involved in the tax preparation industry because many of you know that, a client comes to you and has their tax return prepared and you say that they, for example, are entitled to a $1,000 refund. And they say, 'That's odd. The preparer down the street will offer to file a return for me in which I can get a $5,000 refund.' You are competing in a non-level playing field. You're trying to do things correctly by preparing accurate returns but your clients have the ability to go to other preparers that aren't playing by the same rules and that's why you are under a competitive disadvantage.

And finally, there was the belief that there needed to be the coordination between federal and state agencies to combat identity theft and the filing of false income tax returns with the various taxing agencies.

So prior to the enactment of the regulations, there were various statutory requirements that Tax Return Preparers were obligated to follow. The first one dealt with the registration with New York State for paid Tax Return Preparers. Presently there are approximately 45, 000 registered Tax Return Preparers and the regulations of the law states that each Tax Return Preparer who prepares at least one return for compensation or facilitates the making of a Refund Anticipation Loan or a Refund Anticipation Check, must annually register with the Department.

This registration takes place in approximately in November or December of each year and you would register through your online service account. Now there are individuals who do prepare tax returns that are exempt from the registration requirement. These are Attorneys, Public Accountants, CPA's, IRS Enrolled Agents and the employees of these professions. These individuals are not required to register with New York State because they are already licensed with either a State or Federal licensing agency. Also excluded are individuals that only prepare the businesses tax returns for which they work and volunteer Tax Return Preparers.

New York State also has another class of Registered Tax Return Preparers called Commercial Tax Preparers. These are individuals that prepare ten or more returns for compensation in one year and anticipate preparing at least one return in the next year OR prepare at least one return for compensation in the first year and anticipate preparing at least ten returns for compensations in the following year. These individuals in addition to registering must also pay a $100 fee. And the fee is paid at the same time that you register through your online services account.

So let's just go over one more time the registration requirements. CPA's, Enrolled Agents, Public Accountants and Attorneys that facilitate Refund Anticipation Loans or Refund Anticipation Checks are required to register but do not have to pay the $100 fee. In addition to paid Tax Prepares who prepare between one and ten returns. They also must register but not pay the $100 fee. And finally Paid Tax Prepares who prepare at least ten returns for compensation are required to register in addition to paying the $100 fee.

Now new for 2015, when you register you will have to answer certain questions. The first one will deal with whether or not you are under child support obligations. Any individual that is under an obligation to pay child support, that is more than four months in arrears or behind in their child support obligations and either is not under a payment schedule to pay off the child support, is contesting the child support payments, is getting public assistance or Supplemental Social Security, will not be able to register as a Tax Return Preparer. This is not something that has been initiated by the Tax Department but this is a New York State Law.

In addition you'll be asked if within the last five years you have been convicted of a misdemeanor or felony, or have been disciplined or sanctioned.   If you answer yes to those questions than you'll have to give the circumstances behind your conviction of a misdemeanor, felony or the disciplinary action that you were part of. You will be allowed to register, but then after the fact we will look to see whether or not your registration will be suspended. The reason for this, there are certain crimes that we feel if a person has been convicted of then they are no the appropriate person to be accessing their clients personal information and filing tax returns. Such crimes will deal with larceny, filing false documents, and fraud.

In addition you will have to certify that you are in compliance with your own Federal, State and Local tax filing obligations. The reason for this is, if you are not in compliance with your own tax filing obligations then you should not be preparing returns for other people. Also, you will have to certify that you are at least 18 years of age and that you have a high school diploma or its equivalent. The reason why you have to say you have a high school diploma or its equivalent is because prior to this year many people received GED's which were equivalent to a high school degree. Also, many New York State Tax Preparers did not complete their primary education in this country. They moved here after they completed their education. So, if you have a degree from a high school or equivalent from your home country then you will be allowed to register as a New York State Tax Return Preparer.

Next as I said that if you are a commercial Tax Return Preparer you are required to pay a $100 fee annually when you register. If in a previous year this $100 fee has been dishonored, either because the bank account that you gave us did not exist or the account did not have a $100 in it, then you will not be allowed to register until you have had paid back the amount that you owed during a previous year. And finally if your registration has been suspended previously you will not be able to register until we have a meeting to discuss whether or not the circumstances under which you were suspended still exist.

Next, all New York State Tax Return Preparers are under an E- File mandate. This means that if you or your firm prepared at least one authorized tax document for more than ten different Taxpayers during a year after 2012 and you use commercial tax software to prepare one or more authorized documents after that year, then you are required to E-File all of the returns that you prepare for your clients. And an authorized document includes any document that the Tax Department required to be E-Filed. If for some reason that particular document cannot be E-Filed, then it does not count towards the ten document mandate. Prior to this year there were certain schedules that the New York State Department of Taxation and Finance did not accept through E-Filing. But this year all Tax schedules you should have been able to have either E-Filed or scanned and E-Mailed to the Department with the return that you prepared. Therefore, if you prepared returns for at least ten different Taxpayers during this year then you have a requirement to E-File all of the returns that you prepared using commercial tax software for your clients.

One of the questions that I have received is if you have an exemption for E-Filing from the IRS whether or not New York State will accept that exemption. For those of you that have sought this exemption you are familiar with either form 8944- The Preparer E-File Hardship Waiver Request OR the Preparer Explanation for Not Filing Electronically. On these forms it lists various criteria under which a preparer can ask to get a waiver from the E-Filing mandate. Some of these reasons listed on this form are: the bankruptcy of the preparer, it would be an economic hardship to the preparer, the preparers office is located in an economic disaster area, the client chose not to file electronically, but wanted the return to be filed on paper, the preparer has received a waiver from the E-Filing requirement, the E-File return was rejected by the IRS, the preparer software package does not support the particular form that the preparer is filing, and that the preparer ineligible to file electronically because the IRS E-File does not accept foreign prepares without Social Security Numbers who live and work abroad.

Now as I said that New York does not recognize the federal exemptions but if you do receive a federal exemption and you file your New York State tax return via paper and then you get a bill. You can contact the department explain the fact that you have the federal exemption from e-filing and a decision will be made whether or not the penalty that has been assessed by New York will be waived.

New York State General Business Law also contains a Consumer Bill of Rights. Now let me caution you that this particular statue does not pertain to preparers that are location in New York City.

Now in the Consumer Bill of Rights it says that all Tax Preparers accept those that are exemption, now well discuss those exemptions in a minute, and are subject to various requirements. The first one is they are required to provide contact information to their client. They must tell their client how the client can get in touch with them. In addition, there is a requirement that all Tax Return Preparers distribute Publication 135 entitle the Consumer Bill of Rights Regarding Tax Preparers to each of their clients, prior to engaging the clients.

Now I don't know how many of you have provided each of your clients with Publication 135 in the past. I just want you to be aware that this is a requirement in the New York State general business law. The way you can get a copy of the Publication 135 is go onto New York State Tax Department website www.tax.ny.gov and

Print out a copy of this particular publication and give it to each one of your clients when they come to you to have their return prepared.

As I said, there a certain exempt individuals from this part of the Consumer Bill of Rights.

These exempt individuals are an officer employee of a corporation that only prepares an income tax return for such corporation, an attorney and his employees, a certified public accountant in any of the 50 states and their employees, a public accountant and their employees, an employee of a governmental unit, agency or instrumentality who advises or assists in the preparation of income tax returns in his performance of official duties and an IRS enrolled agent.

So those groups of people are exempt from first part of the Consumer Bill of Rights. However, the Consumer Bill of Rights also deals with tax return preparers that facilitate Refund Anticipation Loans and Refund Anticipation checks.

All tax return preparers who provided these services to their clients are subject to the Consumer Bill of Rights except for those located in New York City.

All preparers that cannot advertise refund anticipant loans as a refund the advertisement that a preparer has must state that the anticipation loan is in fact a loan, a that a fear interest will be charged by the leading institution which must be identified in the advertisement. And before a taxpayer enters into a refund anticipation loan the preparer facilitating the loan must provide a disclosure statement to the taxpayer, in writing in at least 14-point type.

Now, one of my jobs it to look at and accept complaints that taxpayers file against their tax preparers. In the previous year I received approximately 300 complaints. I have to tell you, the vast majority begin with “My preparer has stolen my refund…” In each of these instances the refund did not go to the preparer but in fact it was paid through an anticipation loan. So I reached out to the preparer to see if they had a signed disclosure statement with the client’s signature on it and in all cases they did.

So my take away point number one is the most important thing a Tax Preparer can do is communicate accurately with their client. Make sure the taxpayer understands everything that you are doing because in each of these cases the preparer complied with the law. They prepared the disclosure statement, they had the client sign it but the client had no idea what they were signing and when they didn’t get the check and saw a strange account number on their return they thought their preparer was stealing their refund.

So, the tax preparer is obligated to complete the disclosure statement accurately with all relevant information for each taxpayer. In addition, the disclosure statement must be signed by the taxpayer. If a tax return preparer violates this particular statue they can be penalized anywhere from $250 to $500 for the first violation and $500 to $750 for subsequent violations.

Now as I said, this particular statue does not pertain to tax return preparers that work in New York City. However the New York City Administrative Code does have a similar statute which is found in Title 20, Chapter 5, and Sub-chapter 8 of the New York City Administrative Code.

And in this particular statute is says that as of January 1 of each year, each tax preparer must give each of their customers, free of charge, a current legible copy of the Consumer Bill of Rights regarding tax preparers prior to any discussion with each consumer.

And you can go on the New York City Department of Consumer Affairs website and print out the New York City Consumer Bill of Rights.

Here too the same two individuals that where exempt from the state requirement to give out the Consumer Bill of Rights are also exempt from compiling with this particular New York City statue.

The filer shall be in a form which is early reproduced by a photocopy machine and shall contain information that must contain an explanation of some of the commonly offered services that the tax preparer offers and basis information on what the tax preparer is and not required to do. For example, the tax preparer must sign the return, each of the tax return they preparer, that the tax preparer is never required to accompany a consumer if they are audited. And also a phone number of the New York City Department of Affairs in case the taxpayer wants to file a complaint.

In addition there must be a statement that the consumer has the right to receive information from the preparer prior to becoming obligated to compensate the prepare office services rendered.

Some of these requirements are the preparer must provide written list of the refund and tax preparation services offered by the preparer, an estimated of the total cost that the consumer will be obligated to pay, and such estimates should include: basic filing fees, interest rates, if there are refund anticipation loans, what those fees are going to be, and any other related fees or charges.

If a tax return preparer facilitates Refund Anticipated Loans, then there are additional requirements. These requirements are similar to the statue that is located in the New York State general business law. These requirements are; how much the expected tax refund is going to be, how much the bank charges are going to be, the approximately the Refund Anticipated Loan amount the client will receive, interest rate that the client will be charged, expressed are the estimated annual percentage rate, the time the loan will be outstanding,

The approximate date if the client will get their loan money if they take out a Refund Anticipated Loan and if they don't take out a Refund Anticipated Loan and importantly that the preparer must always explain a refund anticipated loan in a language that a client understands.

Many of you do not speak to your clients in English. Your clients might speak Hsian, Mandarin or Spanish. So if you speak to your clients in a language other than English then you must explain the Refund Anticipation Loan in that particular language. The best practice would also be the disclosure statement that your client signs should be in the language that you're dealing with your client.

Here too, if a tax preparer violates the New York City Violators code they can be assessed a penalty of $250 for the first violation and a penalty between $500 and $750 for each subsequent violation.

Now unfortunately there are some preparers the file so many fraudulent returns or take part in such egregious action that we need to turn to criminal statues to punish those prepares. So hopefully none of you will come under those criminal statues but there are criminal statutes that say that if a tax preparer assists their clients in filing false tax returns then the preparer can be charged criminally just as the client is. Some of the criminal statutes are located on this slide and like I say hopefully none of you will have to deal with these particular issues.

In addition a commercial tax preparer who would intend to evade the requirements of the tax law, fails to sign his or her name on any tax return that requires a signature or fails to register as required by tax law can be charged with a misdemeanor. So as we will see later tax return prepares that fail to register and prepare returns will face civil penalties but they can also be charged with a crime. Therefore you should sign all returns that you prepare and if you are required to register, you should register.

Now approximately three years ago the New York state legislature asked the commissioner of New York State Department and Finance to chair a task for to take a look at the tax preparation industry. There were three basic parts of the industry that this task force was asked to look at. The minimum qualifications of tax preparers, the disciplinary actions that should be taken against these tax preparers who fail to meet these minimal qualifications and also the whole issue of refund anticipation loans and refund anticipation checks. This task for was comprised of members of state government, academia, social service organizations and the tax preparations industry because they wanted a wide ranging group of views to look at the tax preparations industry. As you can from this and this slide there were many people involved in this endeavor to look at the best way to regular the tax preparation industry. And at the end of approximately 3 years of meetings this task force issued a report. And in the report the task force said that “The case for regulation is compelling. We are persuaded that the adoption of a strong, fair and efficient regulatory scheme is essential to advance tax administration, to elevate the professionalism of tax return preparation industry, and to protect New York tax payers.

“Tax return preparers perform a vital service for taxpayers and play a key role in our system of tax administration. It is time for the state to recognize that preparers ought to meet minimum qualifications to help ensure the sound performance of that critical function, so too, we believe taxpayers are entitled to the services of a preparer who is required to conform to a code of conduct designed to ensure the preparer’s integrity and competence.”

“It is the hope of this task for that the recommendations in this report will provide a good starting point for discussion, formulation, and implementation of standards that will protect all New York State Taxpayers.”

And at the end of the legislation in paneling the task force the commissioner was given the power to promulgate the regulations to implement any of the recommendations made by the task force. And that’s what happened in November of 2013, the commissioner studied the recommendations of the task force and these recommendations were promulgated as regulations of New York State and for those of you that are familiar with IRS Circular 230 this task force used that particular document as a model. So many of the New York State regulations are exactly the same as those that are attained in IRS Circular 230.

So the first set of regulations deals with the minimum qualifications of tax return preparers. As I previously said all tax return preparers are required to be 18 years of age and have at least a high school education or its equivalent. You must also pass continuing professional education and this particular training is part of your required education. In addition all commercial tax preparers will be required to pass a competency examination. This examination will be available next April. It will be an online examination, multiple choice and you will have three years to pass it. Once you pass the examination you will never have to take the examination again.

Secondly as I said the task force was asked to look at comprehensive standards that should pertain to all tax return preparers.

So there are certain items that will lead to a person being denied as a New York state tax return preparer. If you look at the list that we're going through it makes sense that if a person has been involved in their particular actions we may want to look closer as to whether or not they ought to be preparing tax returns. At the same time as I said almost 70% of all New York State tax payers do use the services of paid tax return preparers and therefore we need to balance the need to make sure are paid tax return preparers can serve new York state tax payers while still protecting the taxpayers. So as I said previously an individual who is not complaint with their own tax obligations, if they have a previous criminal convection, if they have been subject to adverse disciplinary action then we're going to look at them to see whether or not they should be allowed to register as a paid tax preparer. Also if we have information that a person has willfully violated tax law then they may not be able to register. If you're behind more than four months on your child support obligations then your registration will be denied,

If you in the past you have been in fraud or deceit as a preparer or have taken part in dishonest or discrupulous conduct then you will not be allowed to register. Also if you have failed to register or pay registration fee in the past, fail to complete your continue education and competency exam, or fail to meet the minimum age requirements then you will not be allowed to register.

And finally at the time that the regulations were written the IRS had their registered tax return preparer program. But since that program no longer exists the IRS requirements that you must comply with are that you must have a PTIN in order to file a New York State tax return. In the future if the IRS does have requirements for all paid tax return prepares, then you would also have to meet these requirements before New York State will allow you to register as a preparer in this state.

Now one a person has been allowed to register there are various grounds for discipline that can be brought against a preparer.

Now the mental state involved in these particular grounds are willfully, recklessly, or with gross incompetence. The regulations define recklessly as reckless conduct is a highly unreasonable action, omission or misrepresentation involving an extreme departure from the standards of ordinary care that a tax preparer should observe under the circumstances. A pattern of conduct is a factor that will be taken into account determining whether a preparer acted knowingly, recklessly or with gross incompetence

(b) Gross incompetence. Gross incompetence includes conduct that reflects gross indifference, tax return preparation or tax practice that is grossly inadequate under the circumstances, or a consistent failure to perform obligations to the client.

So if you act under those standards then you may be subject to discipline. Some of the grounds for discipline are that if you're received a subpoena from the department asking for records and the records are non-privileged then you must provide the records to the department. You also are under an obligation to notify the department where unavailable records can be located. You are not required to go to a third party to get those records, you just must let us know where we can find records that are not in your possession that you have been asked to provide pursuant to a subpoena.

You also can't interfere with the Department's attempt to obtain records. So, if we ask you for records and you don't have them but you don't have them but you tell us your client has them, you can't call up your client and tell them to shred the records because the Department is going to be asking for them.

You're under obligation to notify your client of known omissions. Obviously, you have to rely on the information that your client tells you. But you also should be asking your clients questions if something that they tell you just doesn't seem to be right. So, for example, if in the past you've prepared returns for a client and they had two or three deductions and this year they tell you that they have seven deductions, it's possible that they adopted children or got married in the last year and therefore they may have, in fact, seven legitimate deductions, but you have to ask that questions. Similarly, if in the previous year they had two or three bank accounts and some broker statements and this year they don't have the records from those particular financial institutions, you should ask them 'Did they forget to bring them to you?', 'Did they forget to get them?' It's possible that these accounts were closed. But you should ask the next question and you should document what you asked, what was provided to you, and what the answers are.

You're under requirement to properly dispose of pending matters. So if you're representing a client who's protesting an assessment that the Department has placed against them, you can't take actions to keep on prolonging the action. You must dispose of items that you have with the Department promptly.

You can't use the assistance of an unregistered preparer. So if someone you know has had their registration suspended, you can't have them work for you and just not sign the returns. That can subject you to discipline.

Next, you can't charge an unconscionable fee. The last thing that I want to do is get between you and your client. But there comes a point that a fee is so high that it shocks the conscience and the factors that are used to determine whether or not a fee is unconscionable is the type of return that was prepared, the time it should have taken and the amount of work that should have been taken to prepare the return.

For example, all New Yorkers had to sign up again for a STAR exemption. This was a very easy process. In fact, I did it while I was sitting at a ballgame. It took maybe ten minutes. But there were some tax return preparers who were charging $500 to assist their clients to sign up again for their STAR exemption.

Also many of you may have clients that don't have a social security number and therefore they need to get an ITIN from the IRS. This is something that is not a very difficult process but unfortunately we've heard instances where there are preparers charging 3, 4, $5000 to get an ITIN for their clients. These are fees that shock the conscience and if you are involved in this, you may be subject to discipline.

Next, preparers should not take acknowledgements, administer oaths, certify papers, of notarize any documents with respect to any matter that is administered by the Department or for which he or she is employed as a tax return preparer.

You should not endorse or otherwise negotiate a refund check and have the check deposited into your own bank account. This has caused a large problem that we have seen with tax preparers. For example, a taxpayer may go to a preparer, have the return prepared, and the preparer says, well, you're entitled to a $1,000 refund but you live in a bad neighborhood, mail gets stolen frequently. Why don't you have your refund deposited into my account, which is more safe and secure, and I will then give you the $1,000 check when the refund comes in. The client thinks that the preparer is acting is their best interest and agrees to this. Unfortunately, in some of the circumstances, the preparer files a fraudulent return seeking a $5,000 refund. The refund comes to the preparer, he deposits it into his account, gives his client the check for $1,000 that the client is expecting. The client has no idea that there is anything wrong until 3 of 4 years later when the client gets an audit letter from the Department asking for the $4,000 back plus penalties and interest.

In addition to stealing, which the preparer can be charged with, this is the reason why preparers should not have the refund deposited into their own account. If a client is due a refund, the best thing that the preparer can do is have the refund direct deposited into an account that is maintained by the client. Next, the refund can be sent to the client via a debit card. And finally, a check can be cut to the client in their name for the amount of the refund.

Preparers are required to return the records that the client gave them. So all records that a client has given you that you used to prepare the returns should be returned to the client. If need be, you can make copies of these particular records.

Tax preparers should not be involved in a matter that could cause a conflict of interest with their clients. Sometimes you may represent two clients who have conflicting interests and they want you to prepare returns for them. If you are ever under this circumstance, you should advise the clients that it's not a good idea for you to prepare the returns for both of them. But if they demand that you do so, then what you should do is get a written waiver from each of the clients saying that they understand that you may have a conflict but they still want you to prepare each of their returns. You should keep a copy of this waiver so if anyone comes to you later on and asks you why you prepared returns for both of the taxpayers, you'll have the fact in writing that you explained to them that they should seek the services of separate preparers but they wanted you to prepare both of their returns.

Preparers should not submit returns that lack a reasonable basis or involve reckless or intentional disregard of the rules or regulations. In addition, preparers should not take a frivolous position on prepared returns. In addition to possibly subjecting you to discipline, this can also lead to very severe penalties that we'll talk about in a few minutes.

Next, you should not advise your clients to submit documents that delay the administration of the tax laws. That just makes sense. And you should advise your clients of any potential penalties. When you're preparing a return, you should explain to your clients that you're going to be taking certain positions on the return but if, in fact, the Department denies a particular deduction or thinks that certain items should be included as income, that you did not include as income, then you should advise your client of any potential penalties that they may face.

Now as I said earlier, you're entitled to rely on information furnished by your client. But if the information that a client provides to you appears to be incorrect, inconsistent with the facts or incomplete, you must make reasonable inquiries concerning the information. As I previously said, if you've prepared returns for a particular client over a number of years and the circumstances seem extremely difficult this year than in previous years, you should just ask the next question. Find out what in fact changed, whether or not there was a mistake, before you just take what your client tells you and put it on the return.

For those of you that have tax return preparers working for you, you have an obligation to supervise them and make sure that they are in compliance with these regulations. You should have written policies that all your employees follow so that you can be satisfied that they are acting with the highest level of ethics also.

If you give your clients written advice about decisions that you're making, the written advice should be based upon research that you've done, information that you may have received from the Department, or other good and solid information. And if you advertise or solicit clients, you must do so with honesty and integrity. You can't be involved in false advertising, you can't say that you guarantee refunds to all your clients and obviously you can't say that you have 'ins' with the Department which will assist your clients if they get into trouble with the Tax Department.

Now one of the other items that a tax preparer is obligated to do is use due diligence when preparing returns. You must use due diligence when preparing returns. You must use due diligence when discussing your clients returns with the department and also when discussing any items with your particular client. Now due diligence is using the best information and most accurate information that you have when preparing returns. And one of the locations where are there are specific steps you must take to show you have used due diligence is when you ask for the Earned Income Tax Credit on your Federal Tax return. If you have a client that is seeking the Federal Earned Income Tax Credit then you obligated to complete Form 8867, which you submit to IRS with the return and also complete the Earned Income Tax Credit Worksheet which is located in Publication 596. Now New York State does not have a similar due diligence requirement for the Earned Income Tax Credit. But if you have these two documents and someone from the State Department of Taxation and Finance comes to you and asks you why you took the State Earned Income Credit. Then the fact that you have these particular documents will show you did use due diligence. So you should keep a copy of form 8867, the Earned Income Tax Worksheet, you should keep a copy of all the documents that the tax payer provided to you, to substantiate why they are entitled to the State Earned Income Tax Credit and you should keep a detailed record of when and how you received all the information from your client that lead you to believe that your client was entitled to the New York State Earned Income Tax Credit. As I previous stated during the last tax season, New York State paid out close to one billion dollars in the Earned Income Tax Credit and therefore this particular credit is one you may get questioned on.

Now, in addition to the other grounds of discipline there also is certain conduct that is concerned incompetent or disreputable and they are similar to the grounds under which a tax preparer registration can be denied. Criminal convictions; adverse disciplinary actions; if you have been accused of false or misleading information or submissions; if you have willfully been noncompliant with your own tax obligations; if you have assisted clients in the past in tax evasion; misappropriating client funds; we spoke about having your clients refunds a deposit into your own account; if you have attempted to improperly influence official actions; and if you allow a non-registered tax return preparer to work for you then you can be disciplined.

In addition, if you take part in contemptuous conduct; if you give false and misleading opinions to your clients; if you willfully fail to sign your client’s tax returns; if you disclose confidential information. Just remember all the information that your client gives you is confidential. You can share with other people that you rely on or you work with to help you prepare the return but you can’t disclose this information to third parties. For example, if your next door neighbor comes in and has you prepare their income tax return, you can’t go home and tell your husband or wife or significant other “I can’t believe that our neighbor lives in a half a million house and only declares 50,000 in income.” That is confidential information that you can’t disclose to third parties. You also can’t willfully violate the tax law; you have to register, pay the required fee, and complete the educational requirements; and you can’t make false or misleading representations either to your client or Department.

Now there are also best practices. Which are a series of items that we should all hope to meet. But if failure to meet them does not necessarily lead to discipline and this is communication. As I stated previously one of the most important things you must remember is that you must communicate with your clients everything that you are doing. Make sure they understand exactly how you are preparing their return because ultimately they are responsible for what is on their return. So make sure they understand the decisions you are making in terms of what you consider to be income, what you consider to be deductions, what you consider to be credits so later on if they get questioned they have an understanding of what is on their own return. You should apply law to the facts. Before you file a return, you should look at the tax law, look at guidance, look at our publications to make sure you understand exactly what the tax law is, how it is being enforced so you can make an intelligent decision when you prepare your clients returns. You should advise your clients regarding the conclusions that you are reaching. You should tell your clients “I am making these specific conclusions and putting these particular items on your returns based upon X, Y and Z.” Sit down with them, talk to them, inform them, educate them and also you should act with fairness and integrity in practice before the Department. We as the New York State Department of Taxation and Finance we try to act with fairness and integrity when we work with not only preparers but the public and we ask for the same thing in return. So when you call us, don’t yell, don’t scream, and don’t make threats. Especially as it gets closer to April 15. I understand that you are under extreme pressure but we are trying to help you. We are trying to assist you. So just remember, we are all trying to make sure that everyone pays the proper amount and that they administration of the tax system operates smoothly. So as best you can, remember you are required to act with fairness and integrity in your practice before the department.

Now we went through the items of discipline. If unfortunately you are subject to discipline. The forms of discipline are that you may lose your right to prepare the New York State tax returns as a registered tax return preparer or else there may be limitations on your ability to prepare returns. You may be required to take additional continuing education or you may be required to work under the guidance of another tax return preparer until we can be satisfied that you can prepare returns on your own.

If you are going to be the subject of discipline, the notice of proposed discipline or cancellation or suspension of registration or a notice of proposal of refusal to register will be sent to you through your online service account. I am asking you to make sure that the address and e-mail account on your online services account are those you have access to during the entire year. We have come across many situations where we have sent out notice of discipline to e-mail accounts and addresses for preparers that they do not use regularly throughout the year. They may be business accounts that they do not check after April 15th. They may be the business address that they don’t go to regularly after tax filing season is over. So look at your online service account and make sure the e-mail address on it and the address on it is one that you check regularly and that we can communicate with you. Because if you are going to be subject to discipline we want to notify you. We have had some preparers last year that read about that they were disciplined in the New York Times. That is not our goal. That is not in our interest and I know it is not in your interest. If for some reason we can't contact you through your online service account then we will send you a certified or registered mail to your last known address that is reflected on your registration application. So as I said, make sure that's an address where you can receive mail and if for some reason we can't contact you through your online services account and the letter that we send to you registered or certified to the address in your online services account comes back as undeliverable then the notice will be sent to your last known address that we have and that may be your address that is on your income tax return. But unfortunately many people move after they file their income tax return and that is not a good address either to get into contact with you. So the best way to ensure that the information we are sending to you is getting to you is making sure that the information in your online service account is correct.

The notification will be outline the basis of the disciplinary action, it will tell you this action will be protested through a hearing process, it will tell you that the protest must be filed within a certain number of days either with the Bureau of Conciliation and Mediation Services or the Division of Tax Appeals.

These have very specific dates of when the protest must be filed. So if you get a Notice of Discipline make sure you do not file the protest after the protest period has ended because you can lose the right to protest.

The Statue of Limitations is that the notice of proposed disciplinary against a preparer must be issued within 5 years from the date of the act or the omission which forms the basis for the discipline action. However where the action or omission results of falsity or fraud, then the Notice of Discipline can be filed at any time. The 5 years don't pertain under those circumstances.

Now in addition to the penalties that I just outline, the grounds for discipline there are also monetary penalties that are located in the New York tax laws that you should be aware of. In Section 32(f)(1) there are many specific items dealing with Refund Anticipation Loans, I'm not going to go through each one of those because they are very, very detailed. If you do Refund Anticipation Loans with your clients you should make sure you are complying with that particular section because if you do violate it you can be assessed for $500 for each violation in addition to any other penalties that may be pertinent.

If you fail to register or reregister or fail to pay the $100 commercial tax preparer fee you can be assessed a penalty. However, you cure that defect within 90 day that penalty will be waived.

If it has been determined that you have failed to sign a return or Refund Anticipation Loan you can be assessed $250 for each failure. The maximum penalty you can be assessed in a calendar year is $10,000. However, if you have been fined in a previous calendar year then you can be assessed $500 for each failure and in that instance there is no annual cap. If you fail to include your unique identification number the NYTPRIN printed on everything you file then you can be assessed a penalty $100 per failure. The maximum penalty per calendar year is $2,500 and if you have been assessed this penalty in a previous calendar year you can be assessed a penalty of $250 and here to there is no annual cap.

If you employ a non-exempt individual that is not registered you can not only be disciplined but you could be assessed a penalty of $500 for year return if that person files. You are not allowed to charge a separate fee to e-file in New York State and if you do so you can be assessed a $500 penalty for the first violation and a $1,000 for each subsequent violation.

You are required to furnish a copy of a return to each taxpayer who taxes you prepare. If you fail to do this you can be assessed a penalty of $50 and the maximum penalty per calendar year for this particular failure, cannot exceed $25,000.

As I stated earlier you are required to electronically file all returns for all of the clients that you represent. If you have prepared returns at least 10 taxpayer in a previous year the returns can be electronically accepted by the department and you use commercial software.   If you do not electronically file the returns for each of your clients you can be assessed a penalty of $50 per return.

Now the next two penalties are the ones that trouble me the most. Not because they are the upmost highest amount but because I think they are avoidable.

If it is determined that you take a position on a return or claim of refund where there is not a reasonable belief that the position was more likely true than not to be proper or if you take a position that is due to reckless or an intentional disregard of rules or regulations understate your clients tax liability you can be assessed a penalty of $1,000 to $5,000 per return.

Presently we have many preparers who been assessed penalties in excess of one million dollars. Now, some of these preparers are really trying to file phony returns. There are made up dependents on returns, there are stolen Social Security Numbers. These are people who that are ideal candidates for the penalty of $1,000 to $5,000 per return. But unfortunately, there are also preparers who don't understand the tax law. And there position is well I will put this on the return, and they may put it on all the returns they prepare, with the worst case scenario is the department will disallow the credit or include the income back in and there client will be assessed penalties and interest. This is the wrong position to take. If you are unsure about what the law says, you are unsure whether a particular credit is appropriate, if certain income is supposed to be included, if certain deductions are to be taken. Please do not just put it on the return and figure that it will all work out in the wash later on. Ask, look for help, call the department, go on our website; check out our publications and advisements. Look at the tax law to make sure that you are comfortable, that you understand the tax law, before you prepare your clients tax returns.

In many cases preparers get very large penalty assessments and they contact the department. It is determined that it was not an intentional over site or intentional act, but it was just a mistake and the penalty maybe lessened or waived. But you don't want to get such a letter from the department and we don't want to have to issue it to you. So if you are unsure as to a particular item should be treated on a tax return ask first before you put it on a return.

If you go on the New York State Department of Taxation and Finances website and you look at the preparer tab you will see my particular link for the Office of Professional Responsibility. Everything I went over today should be located there. If you have any further question, there is a way that you can contact my office and we will try and work with you.

As I said our goal is to make sure that the taxpayer's of New York State that need the services of paid tax return preparers are able to use and get the services of such professionals.

I hope that what I went over with you today was informative and you can now have a successful career of a professional New York State paid tax return tax preparer.