

Information for Paid Preparers of
New York Income Tax Returns

The New York State Personal Income Tax Regulations for paid preparers (Section 147.6) have been amended to conform generally to federal requirements. The revised regulations apply to returns filed for taxable years beginning on or after January 1, 1986.

Signature Requirements for Paid Preparers

Individual preparers must manually sign New York State personal income tax returns and enter their identifying number and the identifying number of their employer, if applicable, in the appropriate spaces provided. An individual preparer who manually signs the completed return, makes a photocopy of the return, and has the taxpayer sign and file the photocopy will satisfy the manual signature requirement. The tax return preparer's initials, facsimile signature stamp or signed gummed label are not acceptable. If the preparer is unavailable to sign the return, another preparer must review the entire prepared return, then must manually sign the return and furnish his or her identifying number. If more than one person prepares a return, the preparer with the primary responsibility for its overall substantive accuracy must sign.

Primary responsibility for the overall substantive accuracy of the tax return depends on the facts and circumstances of each case. The person with primary responsibility may be the person who actually prepares the return, a supervisor who reviews it, or a person who supplies information to a taxpayer. If the taxpayer or someone else retains the right to make all final decisions on the return, the preparer may not need to sign the return. For example, a Certified Public Accountant who is asked to review a client's income tax return and make a recommendation affecting an entry does not have to sign the client's return if the client's tax director has retained the right to make all final decisions on the return.

Any New York return completed by one or more preparers must also show the firm's name, the employer's identifying number and the complete address of the preparer's place of business where the return was completed. If the place of business is not maintained on a year-round basis, the complete address of the preparer's principal office or business location that is maintained on a year-round basis is to be shown. If no permanent business location is maintained, the address of the preparer's residence is to be used. Paid preparers are not permitted to substitute the postal zip code for the complete address.

Where a New York return is mechanically completed by a computer facility that the preparer does not control, the signature requirement may be satisfied by an attestation manually signed by the preparer and attached to the return filed. The following suggested language meets the requirements for the attestation:

"I attest that all information contained in this income tax return was obtained from (taxpayer's name), and is true and correct to the best of my knowledge." (preparer's signature)

The following examples illustrate the application of these requirements:

Example 1 - Assume Y, a lawyer, is an employee of law firm X and is employed to prepare income tax returns. Also, assume law firm X has been hired by taxpayer T to prepare such taxpayer's 1986 New York State personal income tax return. Employee Y is assigned to obtain the information necessary for completing taxpayer T's New York State personal income tax return and for making determinations with respect to the proper application of the tax laws to such information in order to determine T's New York State personal income tax liability. Employee Y then forwards such information to C, a computer tax service which performs the mathematical computations and prints the New York State personal income tax return by means of computers. C then sends the completed New York State personal income tax return to Y, who reviews the accuracy of such return. Y is the individual preparer who is primarily responsible for the overall accuracy of taxpayer T's New York State personal income tax return. Therefore, employee Y must sign the New York State personal income tax return as the preparer and indicate on such return the name and address of his employer, law firm X.

Example 2 - Assume company A is a national accounting firm which receives compensation for preparation of income tax returns. B and C, who are employees of A, are involved in preparing the 1986 New York State partnership return of partnership T. After they complete such return, including the gathering of the necessary information, the proper application of the tax laws to such information, and the performance of the necessary mathematical computations, D, a supervisory employee of company A, reviews the New York State partnership return. As part of this review, D reviews the information provided and the application of the tax laws to this information. The mathematical computations are proved by E, an employee in A's comparing and proving department. The policies and practices of company A require that employee P finally review the New York State partnership return. The scope of P's review includes reviewing the information provided by applying to this information P's knowledge of partnership T's affairs, observing that company A's policies and practices have been followed, and making the final determination with respect to the proper application of the tax laws.

P may or may not exercise these responsibilities, or may exercise them to a greater or lesser extent, depending on the degree of complexity of the New York State income tax return, P's confidence in D (or B and C), and other factors. P is the individual preparer who is primarily responsible for the overall accuracy of partnership T's New York State partnership return. Therefore, P must sign the New York State partnership return as the preparer and indicate on such return the name and address of his firm, company A.

Example 3 - Assume company X employs A, B and C to prepare income tax returns for taxpayers. Employees A and B have each been assigned to collect information from taxpayers and apply the tax laws to the information. Such taxpayers' New York State personal income tax returns are completed by a computer service. On the day such returns are ready for A's and B's signature as paid preparers, A is away from the city for one week on another assignment and B is on detail to another office for the day. Employee C may sign the New York State personal income tax return prepared by A, provided that C reviews the information obtained by A relative to the taxpayer and C reviews the preparation of such return prepared by A. Employee C may not sign the New York State personal income tax return prepared by B because B is available. In addition, each New York State personal income tax return must indicate the name and address of company X.

Definition of a Paid Preparer

An income tax preparer is any person who prepares for compensation, or who employs (or engages) one or more persons to prepare for compensation, all or a substantial portion of another person's New York income tax return required to be filed under Article 22 of the Tax Law.

Only a person (or persons acting in concert) who prepares all or a substantial portion of a New York State income tax return will be considered to be a preparer (or preparers) of the return. A person who renders advice which is directly relevant to the determination of the existence, characterization, or amount of an entry on a New York State income tax return, will be regarded as having prepared that entry, so long as such person has actual knowledge that the taxpayer utilized the advice rendered on the New York State return. Whether a schedule, entry, or other portion of a return is a substantial portion is determined by comparing the length and complexity of, and the tax liability involved in, that portion to the length and complexity of, and tax liability involved in, the New York State income tax return as a whole.

A "substantial portion" of a return is any amount (or combined amounts) of income, deductions, or modifications, or any amount used to determine credits, that is:

1. \$2,000 or more, provided that this amount is also 20 percent or more of the New York adjusted gross income of an individual (or of the gross income of a taxpayer other than an individual). If more than one schedule, entry, or other portion is involved, they will be aggregated in applying this rule.

For example, if a person prepares a schedule which totals \$1,500 for an individual taxpayer's New York income tax return and also gives advice making such person a preparer of another schedule which totals \$1,000, such person is not a preparer if the taxpayer's New York adjusted gross income shown on the New York income tax return is more than \$12,500.

2. \$100,000 or more

The substantial portion provision will not apply to a person who prepares all of a New York income tax return.

Persons Who Are Not New York Income Tax Return Preparers

The following are not paid preparers:

- A person who furnishes typing, reproducing, or other mechanical assistance in the preparation of a New York income tax return.
- An individual who prepares a return for a person or general partner who employs the preparer regularly and continuously.
- A person who prepares a return for a trust or estate of which the person either is a fiduciary or is an employee of the fiduciary.
- Any individual who provides tax assistance under a Volunteer Income Tax Assistance (VITA) program established by the Internal Revenue Service or the New York State Tax Department and any organization sponsoring or administering a Volunteer Income Tax Assistance (VITA) program.
- Any individual who provides tax counseling for the elderly under a program established by the Federal Revenue Act of 1978 and any organization sponsoring or administering such a program, but only with respect to that sponsorship or administration.

Record keeping Requirements for Paid Preparers

New York paid preparers must retain copies of all returns they prepare and records of any arithmetical or clerical errors corrected for a period of three years after the due date of the return, including extensions.

City of New York and City of Yonkers

The regulations relating to the City of New York and City of Yonkers personal income taxes and nonresident earnings taxes have been similarly amended to reflect the above changes.