

INFORMATION FOR INCOME TAX RETURN PREPARERS

For tax year 2009



The information presented is current as of this publication's print date. Visit our Web site at www.tax.ny.gov for up-to-date information.

NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

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Introduction

This publication discusses the rules, including the electronic filing (e-file) mandate, that are applicable to tax return preparers of New York State personal income tax returns (including partnership and fiduciary returns) under Tax Law section 658(g)(5). In addition, the publication describes the requirements of the Tax Preparer Registration Program under Tax Law section 32.

As you read this publication, be aware that the Tax Law provides different definitions of who is a tax return preparer for purposes of the Tax Preparer Registration Program and for purposes of the requirements for tax return preparers found in Tax Law section 658(g).

For additional information that may be of interest to you as a preparer, see the *Tax Professionals* page on the Tax Department Web site and Publication 3, *A Guidebook of Resources For Tax Practitioners*.

Tax Preparer Registration Program

Tax Law section 32

Chapter 59 of the Laws of 2009 added section 32 to the Tax Law. Section 32 imposes an annual requirement on certain tax return preparers, facilitators of refund anticipation loans, and facilitators of refund anticipation checks to register with the Tax Department. For purposes of the Tax Preparer Registration Program, a separate definition of a tax return preparer was added to section 32 to specify who would be required to register with the Tax Department and who would be excluded from the registration requirements. A tax return preparer who meets the definition of a commercial tax return preparer will also be required to pay an annual registration fee of \$100. In addition, the law includes certain requirements and restrictions on tax return preparers and facilitators, with significant penalties for those who do not comply.

Definitions for purposes of the Tax Preparer Registration Program

The following definitions apply to the Tax Preparer Registration Program.

Tax return preparer means an individual who prepares a substantial portion of any return for compensation. Tax return preparers include:

- enrolled agents;
- employees of a tax return preparer or a commercial tax return preparation business who prepare returns for clients of that preparer or preparation business; and
- partners who prepare returns for clients of a partnership engaged in a commercial tax return preparation business.

The following individuals are not considered tax return preparers for purposes of the registration program:

- attorneys, public accountants, and certified public accountants;
- the employees of a law firm, public accounting firm, or certified public accounting firm who prepare returns under the supervision of an attorney, public accountant, or certified public accountant in that firm. For purposes of this exclusion, a firm can be comprised of one or more lawyers, public accountants or certified public accountants. The term *supervision*, as used in this exclusion, means the direct onsite supervision of an employee, including the responsibilities of directing, assigning, and reviewing the employee's work;
- volunteer tax preparers;
- employees of a business or partners in a partnership whose job responsibilities include preparation of only that business' or that partnership's returns; and
- employees of a tax return preparer or a commercial tax return preparation business who provide only clerical or other comparable services.

Note: An individual may be excluded from the definition of a tax return preparer based on one of the above criteria, but may still be considered a facilitator (see definition of *facilitator* on page 7) and be subject to the registration requirements. An attorney, public accountant, or certified public accountant who is retired or no longer actively practicing his or her profession is not excluded from the definition of a tax return preparer if he or she prepares New York tax returns for compensation. (See *Registration requirements* on page 7.)

Commercial tax return preparer means a tax return preparer who:

- prepared ten or more returns for compensation in the preceding calendar year, and will prepare at least one return for compensation during the current calendar year; or
- prepared fewer than ten returns for compensation in the preceding calendar year, but will prepare ten or more returns for compensation during the current calendar year.

Commercial tax return preparation business means an entity that employs individuals who prepare tax returns and that meets the thresholds set in the definition of a commercial tax return preparer above.

Facilitator means a person who individually or in conjunction or cooperation with another person:

- solicits the execution of, processes, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check;
- serves or collects upon a refund anticipation loan or refund anticipation check; or
- in any other manner facilitates the making of a refund anticipation loan or refund anticipation check.

Facilitator does **not** include an employee of a facilitator who provides only clerical or other comparable support services to the facilitator.

Note: An individual who is excluded from the definition of a *tax return preparer* can still be considered a *facilitator* and be subject to the registration requirements. (See *Registration requirements* below.)

Refund anticipation check (RAC) means a check, stored value card, or other payment mechanism:

- that represents the proceeds of a tax refund or tax credit;
- that was issued by a depository institution or other person that received a direct deposit of the tax refund or tax credits; and
- where a fee or other consideration is paid for such payment mechanism.

Refund anticipation loan (RAL) means a loan that is secured by, or that the creditor arranges to be repaid directly or indirectly from, the proceeds of an income tax refund or tax credits. A RAL also includes any sale, assignment, or purchase of a tax refund at a discount or for a fee, whether or not the amount is required to be repaid to the buyer or assignee if the Internal Revenue Service or the Tax Department denies or reduces the amount of the tax refund.

Registration requirements

Each tax return preparer, as defined on page 5, who will prepare at least one return in a calendar year must register electronically with the Tax Department for that calendar year. Tax return preparers who prepare personal income tax returns (including fiduciary returns) must register with the Tax Department before they prepare any personal income tax returns that will be filed on or after December 31, 2009. For this purpose, withholding tax returns and partnership returns (including the IT-204-LL)

are not considered personal income tax returns. Tax return preparers who prepare returns other than personal income tax returns and do not prepare any personal income tax returns must register with the Tax Department before they prepare any returns that will be filed on or after December 31, 2010.

Each facilitator who will facilitate the making of a RAL or a RAC in a calendar year must register electronically with the Tax Department for that calendar year. Facilitators must register with the Tax Department before they facilitate the making of a RAL or a RAC on any return that will be filed on or after December 31, 2009.

Individual tax return preparers and facilitators must register on the Tax Department's Web site at *www.tax.ny.gov* using the Online Services. Instructions are provided on the Web site to guide users through the process.

As an alternative to having each tax return preparer and facilitator who works for a business register separately, a business may choose to register the tax return preparers and facilitators that it employs at one time using the Tax Department's bulk registration process. More detailed information on the bulk registration process is available on the Tax Department's Web site.

At the completion of the registration process, each tax return preparer and facilitator will be issued a tax return preparer or facilitator registration certificate and will be assigned a New York Tax Preparer Identification Number (NYTPRIN). If an individual acts as both a tax return preparer and a facilitator, one registration certificate and NYTPRIN indicating both activities will be issued.

A tax return preparer, commercial tax return preparation business, or facilitator must ensure that any employee or prospective employee who will meet the definition of a tax return preparer or facilitator is properly registered with the Tax Department and possesses a valid registration certificate and NYTPRIN.

Each registered tax return preparer or facilitator must electronically re-register with the Tax Department annually. Those required to register or re-register must follow the registration instructions on the Tax Department's Web site.

Fee requirements

At the time of registration or re-registration, each commercial tax return preparer must electronically pay an annual fee of \$100 to the Tax Department. Registration of a commercial tax return preparer is **not** complete until the fee is paid.

No fee is required for a tax return preparer who does not meet the thresholds set in the definition of a commercial tax return preparer. Additionally, there is no fee for an individual who only meets the definition of a facilitator.

Use of the registration certificate and the NYTPRIN

Each tax return preparer and facilitator must enter his or her NYTPRIN on:

- any personal income tax return for tax years 2009 and after that the tax preparer is required to sign;
- any tax return for tax types other than personal income tax that the tax preparer is required to sign that is due on or after December 31, 2010; and
- each RAL and RAC document the facilitator is required to sign on or after December 31, 2009.

The issuance of a tax return preparer or facilitator registration certificate and NYTPRIN is not an endorsement, and cannot be advertised as an endorsement, by the Tax Department of the tax return preparer or facilitator, his or her qualifications, or the services rendered by him or her.

Restrictions on tax return preparers and facilitators

A tax return preparer who has not registered with the Tax Department or a commercial tax return preparer who has not registered and paid the required registration fee will not be allowed to represent his or her clients before the Division of Taxation or the Division of Tax Appeals.

Section 32 of the Tax Law also places additional restrictions on tax return preparers and facilitators regarding RALs and RACs. The new law provides that a tax return preparer or facilitator must not:

- charge or impose any fee, charge, or other consideration in the making or facilitating of a RAL or RAC apart from the fee charged by the creditor or bank that provides the loan or check;
- engage in unfair or deceptive acts or practices in the facilitating of a RAL or a RAC, including making any oral statements contradicting any of the information required to be disclosed under the Consumer Bill of Rights Regarding Tax Preparers;
- directly or indirectly arrange for a third party to charge any interest, fee, or charge related to a RAL or RAC;
- include any of the following provisions in any documents provided or signed to obtain a RAL or RAC, including the loan application or

agreement. Any of these provisions shall be deemed null, void and of no effect:

- a hold harmless clause
 - a confession of judgment clause
 - a waiver of the right to a jury trial
 - any assignment of or order for payment of wages or other compensation for services
 - a waiver of any provision of the Consumer Bill of Rights Regarding Tax Preparers
 - a waiver of the right to injunctive, declaratory, other equitable relief, or relief on a classwide basis;
-
- take or arrange for a creditor to take a security interest in any property interest of the taxpayer other than the proceeds of the tax refund to secure payment of a RAL;
 - directly or indirectly, individually or in conjunction or cooperation with another person, engage in the collection of an outstanding or delinquent RAL for any creditor or assignee;
 - refer, facilitate, solicit consumers, or conduct business on behalf of, in conjunction with, or on the same premises as a third party engaged in check cashing for a fee;
 - make a misrepresentation of fact in obtaining or attempting to obtain a registration; or
 - engage in any other action prohibited by rules promulgated by the Commissioner.

A tax return preparer who violates any one of the above provisions is subject to a penalty of \$500 for each violation.

For more information on the Tax Preparer Registration Program, see TSB-M-09(11)C, (9)I, (10)M, (3)MCTMT, (4)R, (15)S, *Tax Preparer Registration Program*, and TSB-M-09(14)C, (16)I, (13)M, (5)MCTMT, (11)R, (21)S, *Amendment to the Definition of Tax Return Preparer for the Tax Preparer Registration Program*, or visit the Tax Department Web site.

Consumer bill of rights regarding tax preparers

General Business Law
Article 24-C

Chapter 432 of the Laws of 2008 added Article 24-C to the General Business Law. The law is intended to increase consumer protection in the paid income tax preparer industry. As part of providing consumer protection, the law provides certain requirements for preparers to follow.

Effective January 1, 2009, tax preparers are subject to the following requirements unless specifically exempt by law:

- **Requirement to provide contact information.** Tax preparers are required to provide each of their customers with a receipt containing an address and phone number at which the preparer can be contacted throughout the year. If the actual person who prepared the return is an employee, partner, or shareholder of an entity that is a tax preparer, the general address and phone number of the entity should be on the receipt.
- **Requirement to distribute Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*.** The Tax Department is required to produce and make available to tax preparers an informational flier providing certain information for consumers about their rights regarding tax preparers. The flier is Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*, and is available on the Tax Department Web site.

As of January 1 of each year, tax preparers are required to obtain the current version of Publication 135 from the Tax Department Web site and reproduce it for their customers. In addition, they must give each customer a free copy of Publication 135 **before** any further discussions with the customer. At that time, they must direct each customer to review the publication and must answer any questions the customer may have regarding the content of the publication.

By no later than October 15 of each year, the Tax Department must send a copy of Publication 135 to each tax preparer who has been found to be in violation of the consumer bill of rights requirements regarding tax preparers as stated above.

Note: The Tax Department will not print and mail bulk orders of Publication 135 to tax preparers for distribution to their customers.

The following tax preparers are exempt from the above requirements to provide a receipt containing contact information and to distribute Publication 135:

- an employee or officer of a business enterprise who is preparing the tax returns of that business enterprise;
- a fiduciary, and the employees of the fiduciary, who advise or assist in the preparation of income tax returns on behalf of the fiduciary estate, the testator, trustee, grantor, or beneficiaries;

- an attorney who advises or assists in the preparation of tax returns in the practice of law, and his or her employees;
- a certified public accountant (CPA) licensed under the New York State Education Law or licensed by one or more of the states or jurisdictions of the United States, and his or her employees;
- a public accountant licensed under the New York State Education Law and his or her employees;
- an employee of a governmental unit, agency, or instrumentality who advises or assists in the preparation of income tax returns in the performance of his or her duties; and
- an agent enrolled to practice before the Internal Revenue Service (IRS).

For more information, see the *Tax Professionals* page on the Tax Department Web site and TSB-M-09(13)I, *Consumer Bill of Rights Regarding Tax Preparers*.

Refund anticipation loans (RALs)

All tax preparers are subject to the following requirements concerning refund anticipation loans (RALs).

Tax preparers are prohibited from advertising RALs as refunds (for example, advertising a RAL as an *instant refund*). Additionally, any advertisement by a tax preparer that mentions RALs must state conspicuously that a RAL is in fact a loan and that a fee or interest will be charged by the lending institution. The lending institution must be identified in the advertisement.

In addition, **before** a taxpayer enters into a RAL, the tax preparer facilitating the loan must provide a disclosure statement to the taxpayer, in a format specified by law. A tax preparer is obligated to complete the required disclosure accurately with all relevant information for each taxpayer. The tax preparer (and facilitator, if different) must also include his or her name and unique identification number that is required and assigned by the Tax Department under section 32 of the Tax Law. The completed disclosure statement must be signed by the taxpayer before he or she enters into a RAL. In addition, the facilitator must tell the taxpayer (in the language primarily used for oral communication between the facilitator and the taxpayer) of all of the following:

- (1) The RAL is a loan that only lasts one to two weeks.

- (2) If the taxpayer's tax refund is less than expected, the taxpayer is liable for the full amount of the loan and must repay any difference.
- (3) If the taxpayer's refund is delayed for any reason, there may be additional costs, such as additional interest, that the taxpayer will have to pay.
- (4) The amount of the RAL fee.
- (5) The RAL interest rate.

The Tax Department will not provide the disclosure statement in an official form for tax preparer use.

For more information, see the *Tax Professionals* page on the Tax Department Web site and TSB-M-09(13)I, *Consumer Bill of Rights Regarding Tax Preparers*.

Refund anticipation checks (RACs)

All tax preparers are subject to the following requirements concerning refund anticipation checks (RACs).

Before any taxpayer enters into an agreement to receive a refund anticipation check, the tax preparer facilitating the agreement must provide a disclosure statement to the taxpayer, in a format specified by law.

A tax preparer is obligated to complete the required disclosure statement accurately with all relevant information for each taxpayer. The tax preparer (and facilitator, if different) must also include his or her name and unique identification number that is required and assigned by the Tax Department under section 32 of the Tax Law. The completed disclosure statement must be signed by the taxpayer before he or she enters into a RAC agreement. In addition, the facilitator must tell the taxpayer (in the language primarily used for oral communication between the facilitator and the taxpayer) of the following:

- (1) the amount of the RAC fee, and
- (2) that the taxpayer can receive his or her refund in the same amount of time without a fee if the tax return is filed electronically and the taxpayer chooses direct deposit to his or her own personal bank account.

For more information, see the *Tax Professionals* page on the Tax Department Web site and TSB-M-09(13)I, *Consumer Bill of Rights Regarding Tax Preparers*.

**Tax preparers
operating within
New York City**

Tax preparers operating within New York City are not subject to the provisions of Article 24-C of the General Business Law for tax returns actually prepared within the city. Instead, Subchapter 8 of Chapter 5 of Title 20 of the Administrative Code of the City of New York provides rules that apply specifically to tax preparers operating in New York City. For more information on New York City's consumer bill of rights regarding tax preparers, visit the New York City Department of Consumer Affairs Web site (www.nyc.gov/consumers) or dial 311 (212-NEW-YORK if you are outside New York City).

**Requirements for
tax return
preparers**

Tax Law section 658(g)

For personal income tax purposes, a *tax return preparer* (preparer) is any person who prepares any return or claim for refund for compensation, or who employs or engages anyone to prepare any return or claim for refund for compensation.

When preparing income tax returns and claims for refund, preparers must:

- E-file returns if certain criteria are met (see *E-file mandate for tax return preparers* on page 15).
- Sign the income tax return or refund claim (see *Signature requirements* on page 17).
- Include the identifying number of the preparer on the income tax return or claim for refund. If an individual preparer is an employee of a preparer or is a partner in a partnership that is a preparer, the income tax return or claim for refund must also include the identifying number of the employer or partnership. Note: Preparers who are required to register with the Tax Department under Tax Law section 32 must include the New York Tax Preparer Identification Number (NYTPRIN) that is assigned by the Tax Department. For more information, see TSB-M-09(11)C, (9)I, (10)M, (3)MCTMT, (4)R, (15)S, *Tax Preparer Registration Program*, and TSB-M-09(14)C, (16)I, (13)M, (5)MCTMT, (11)R, (21)S, *Amendment to the Definition of Tax Return Preparer for the Tax Preparer Registration Program*.
- Furnish a completed copy of the income tax return or claim for refund to the taxpayer not later than the time that the return or claim for refund is presented for the taxpayer's signature.
- Keep a completed copy of the income tax return or claim for refund for each taxpayer, or keep a list of the name and identification number of each taxpayer for whom a return or claim for refund was prepared. The completed copy of the return or claim for refund, or the list, must be available for inspection by the Tax Department upon request. The completed copy of the return or the list must be kept for a period of

three years after the due date of the return (without regard to extensions) or three years after the date the return was presented to the taxpayer for signature, whichever is later. The completed copy of the claim for refund or the list must be kept for a period of three years from the time the claim for refund was presented to the taxpayer for signature.

Electronic filing (e-file)

E-file uses computer software or an internet application to file income tax returns electronically.

To participate in the New York State e-file program, a preparer must

- be an electronic return originator (ERO) authorized to e-file returns with the IRS, and
- use tax preparation software that has been tested by the New York State Tax Department.

A preparer who is not currently an authorized ERO, should visit the IRS Web site (www.irs.gov) and apply online through the IRS e-services for tax professionals.

For detailed information on New York State's e-file program, visit the Tax Department's Web site (www.tax.ny.gov).

E-file mandate for tax return preparers

Tax Law section 658(g)(10)

The Tax Law **requires** many preparers to e-file their clients' tax returns, including extensions. The law applies to returns required to be filed under Article 22 of the Tax Law (the personal income tax law) that the Commissioner of Taxation and Finance has authorized to be filed electronically. (If a preparer is using software that does not support the e-filing of an extension, the preparer must file the extension directly on the New York State Tax Department Web site).

For the calendar year beginning on January 1, 2010, a preparer must e-file all individual income tax returns and extensions, all fiduciary returns, and all partnership returns (including Form IT-204-LL, *Limited Liability Company/Limited Liability Partnership Filing Fee Payment Form*) and extensions if the preparer was subject to the mandate in a prior year, or if the preparer:

- prepared more than **100** New York State *original tax returns* for tax year 2008 during calendar year 2009 (do not include extensions, amended returns, or returns filed for a prior year when determining the number of *original tax returns* prepared during calendar year 2009); and

- uses tax preparation software to prepare one or more New York State individual, fiduciary, and/or partnership returns (including extensions) for tax year 2009 in calendar year 2010.

Preparers subject to the e-file mandate, must continue to e-file all of their clients' authorized tax returns in all future years regardless of the number of returns prepared. However, the mandate includes a provision that allows a client to opt-out of e-file. The client must sign Form TR-800-IT, *Taxpayer Opt-Out and Reasonable Cause Record for Tax Return Preparers for Tax Year 2009*, Form TR-800-FD, *Fiduciary Opt-Out and Reasonable Cause Record for Tax Return Preparers for Tax Year 2009*, or Form TR-800-PT, *Partnership Opt-Out and Reasonable Cause Record for Tax Return Preparers for Tax Year 2009*. If it is a joint personal income tax return, both spouses must sign. If it is a fiduciary return, the fiduciary or officer representing the fiduciary must sign. If it is a partnership return, an authorized member or general partner must sign. A separate Form TR-800-IT, TR-800-FD, or TR-800-PT is required for **each** return or extension not being e-filed. Preparers must retain Form(s) TR-800-IT, Form(s) TR-800-FD, and Form(s) TR-800-PT in their records for three years.

An *original tax return* is a tax return required under Article 22 of the Tax Law that is filed during the calendar year for which that return is required to be filed.

An *authorized tax return* is any return required by Article 22 of the Tax Law that the Tax Department has authorized to be filed electronically. For calendar year 2010, the Tax Department has authorized the e-filing of individual personal income tax returns and extensions, fiduciary returns, and partnership returns (including Form IT-204-LL) and extensions.

For additional information on the e-file mandate (including the new e-file mandate for certain business tax returns), visit the Tax Department's Web site.

Filing due dates

Calendar-year personal income tax returns for tax year 2009 may be filed after January 1, 2010, but no later than April 15, 2010.

Fiscal-year income tax returns must file by the 15th day of the fourth month following the end of the taxpayer's fiscal year.

Automatic extension of time to file

To get an automatic extension of time to file a New York State income tax return, file Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*, or Form IT-370-PF, *Application for Automatic Extension of Time to File for Partnerships and Fiduciaries*, on or before

the due date of the taxpayer's return, along with full payment of any tax due (if applicable).

Form IT-370 will automatically extend the due date of the taxpayer's return for six months. For a calendar-year taxpayer, if Form IT-370 is filed on or before April 15, 2010, the due date of the return will be extended to October 15, 2010.

Form IT-370-PF will automatically extend the due date for a partnership return or a fiduciary income tax return for five months. For a calendar-year taxpayer, if Form IT-370-PF is filed on or before April 15, 2010, the due date of the return will be extended to September 15, 2010. Electing large partnerships that are allowed a six-month extension of time to file for federal purposes are still allowed a six-month extension of time to file for New York State.

Form IT-370 and Form IT-370-PF may be filed online using the Tax Department Web site, electronically (e-file), or by U.S. mail.

Individual taxpayers who choose to file a paper return and expect to receive a refund or anticipate having no amount of New York State, New York City, or Yonkers income tax due, or no sales or use tax remaining unpaid as of the due date of the return, can file a copy of federal Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*, instead of Form IT-370.

Note: If a preparer is required to e-file a taxpayer's tax return, the preparer is required to e-file the taxpayer's Form IT-370 or Form IT-370-PF, if applicable. See *E-file mandate for tax return preparers*, on page 15.

Signature requirements

Paper returns

A preparer may manually sign original returns, amended tax returns, and claims for refund. As an alternative, the preparer may sign by means of a rubber stamp, mechanical device, or computer software program. These alternative methods of signing must include either a facsimile of the individual preparer's signature or the individual preparer's printed name. A preparer using one of these alternatives is personally responsible for affixing the signature to the returns or claims for refund.

A preparer who uses alternative methods of signing must provide all of the other preparer information that is required on the tax returns and claims for refund, such as the name, address, and relevant employer identification number. In addition, a preparer must provide the New York Tax Preparer Identification Number (NYTPRIN) if required to have one and the same

identification number used for federal personal income tax purposes (social security number or preparer tax identification number (PTIN)). If a federal income tax return is not required, a preparer must use the preparer's PTIN unless the preparer does not have one; otherwise, the preparer must use the preparer's social security number.

For more information, see TSB-M-05(1)C, (1)I, (1)S, (1)M, *Alternative Methods of Signing for Tax Return Preparers*.

E-file returns

For e-filed personal income tax returns, both the taxpayer(s) and the preparer must sign Form TR-579-IT, *New York State E-file Signature Authorization for Tax Year 2009 for Forms IT-150, IT-201, or IT-203*. For e-filed partnership returns, both the taxpayer and the preparer must sign Form TR-579-PT, *New York State E-File Signature Authorization for Tax Year 2009 for Forms IT-204 and IT-204-LL*. Form TR-579-IT and Form TR-579-PT must be retained by the preparer for three years. In addition, the preparer must also sign the return(s) electronically by checking a box that indicates the preparer has read and agreed to the department's declaration certification language.

For e-filed fiduciary returns, the fiduciary must sign Form TR-579.2-IT, *Declaration for E-filing of Fiduciary Income Tax Returns*.

E-file extensions

If there is no tax due on an e-filed extension, there is no signature requirement for the taxpayer or the preparer.

If there is tax due with an e-filed extension, and the extension is e-filed using tax preparation software, the taxpayer(s) **must** pay the balance due by authorizing an electronic funds withdrawal using Form TR-579.1-IT, *New York State Taxpayer Authorization for Electronic Funds Withdrawal for Tax Year 2009 Form IT-370*. Form TR-579.1-IT will establish that the taxpayer(s) has authorized the electronic return originator (ERO) to include the information necessary for the Tax Department to initiate the withdrawal. The ERO is not required to sign Form TR-579.1-IT for an extension; however, the ERO must retain a copy for three years. In addition, the ERO/preparer must also sign the return(s) electronically by checking a box that indicates that they have read and agreed to the department's declaration certification language.

If there is tax due with an e-filed extension, the preparer may file the extension directly on the Tax Department Web site to allow the taxpayer the following payment options:

- electronic funds withdrawal
- credit card
- check or money order

Online Services

Online Services offer tax professionals secure and convenient access to a variety of tax services. Access is available 24 hours a day, 7 days a week (except for scheduled maintenance). Once registered as a tax professional you can access available services on behalf of your clients as authorized. To register as a tax professional, you must have a valid Electronic Filer Identification Number (EFIN) issued by the IRS.

For more information, visit the Tax Department Web site and access *Online Services*.

Privacy and confidentiality

The Tax Law contains strict secrecy provisions to protect the confidentiality of tax returns and tax return information. Consequently, a taxpayer must give specific written authorization to a practitioner, paid preparer, or other representative before he or she will be given access to a taxpayer's confidential records or be allowed to represent a taxpayer before the Tax Department or the Division of Tax Appeals. There are various levels of authorization a taxpayer can give.

Third-party designee

If a taxpayer wants to authorize a preparer or other designee to discuss their 2009 tax return with the New York State Tax Department, the taxpayer must mark the **Yes** box in the *Third-party designee* area of his or her return and enter the information requested.

If the taxpayer marks the **Yes** box, the taxpayer(s) is authorizing the Tax Department to discuss with the third-party designee any questions that arise during the processing of his or her return. The taxpayer is also authorizing the designee to

- give the Tax Department any information that is missing from the return;
- call the Tax Department for information about the processing of the return or the status of the refund or payment(s); and
- respond to certain Tax Department notices that the taxpayer(s) shares with the designee about math errors, offsets, and return preparation. The Tax Department will **not** send notices to the designee.

Taxpayers are not authorizing the designee to receive any refund check, bind the taxpayer to anything (including additional tax liability), or otherwise represent the taxpayer before the Tax Department. If a taxpayer(s) wants the designee to perform those services, the taxpayer should file a power of attorney.

The authorization for a 2009 tax return(s) will end automatically one year after the later of the return due date (including any extension) or the date the 2009 return was filed.

Power of attorney

A power of attorney is evidence that a practitioner or other person may receive confidential tax information and make legally binding decisions on behalf of a taxpayer. The power of attorney must contain explicit authorization for the practitioner to act for the taxpayer, and must be properly completed and signed.

The Tax Department prefers that preparers use Form POA-1, *Power of Attorney*, but will accept other forms if they contain all the necessary elements. Form POA-1 may be used for tax matters administered by the New York State Tax Department, the New York City Department of Finance, or both.

For more information on powers of attorney, including the most current version of Form POA-1, visit the Tax Department Web site.

**Form DTF-505,
Authorization for
Release of Photocopies
of Tax Returns and/or
Tax Information**

Taxpayers can use Form DTF-505 to authorize the Tax Department to release specific items of tax information to a preparer without a power of attorney. Such authorization includes the following:

- the taxpayer's name, identification number, and address
- the specific reference to the year and tax type of the return, report, application, etc., to be released (a fee of twenty-five cents per page may apply)
- the name and address of the individual to whom the information is to be released
- the taxpayer's properly authorized signature

**Voluntary
Disclosure and
Compliance
Program**

The Voluntary Disclosure and Compliance Program allows eligible taxpayers to voluntarily disclose and pay certain underreported tax liabilities and interest. By executing a compliance agreement with the department, taxpayers will avoid tax penalties as well as civil, administrative, and criminal actions by the department. In addition, the taxpayer will not be subject to any criminal tax prosecution in New York State for the disclosed conduct.

An *eligible taxpayer* is an individual or entity subject to any tax imposed by, or pursuant to the authority of the Tax Law or any other law imposing administrative tax responsibilities on the department, and who meets all of the following criteria:

- The taxpayer is not currently under audit by the department.
- The taxpayer is voluntarily disclosing a New York tax liability that the department has not determined, calculated, researched or identified at the time of the disclosure.
- The taxpayer is not currently a party to any criminal investigation being conducted by an agency of the state or any political subdivision thereof.
- The taxpayer is not seeking to disclose participation in a tax avoidance transaction that is a federal or New York State reportable or listed transaction.

The term *taxpayer* includes any person required to pay or collect any of the taxes covered by the program. A taxpayer can be an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person subject to tax.

An eligible tax for the program is any tax currently or previously imposed under the Tax Law or administered by the department. To be eligible the tax must not have been previously assessed.

For additional information on this program or to apply online, visit the Tax Department Web site.

Penalties

Failure to conform to certain requirements

Tax Law section 685(u)

A penalty of \$50 per return or claim for refund (maximum penalty of \$25,000) may be assessed against a preparer for failure to (1) furnish a completed copy of the income tax return or claim for refund to the taxpayer, or (2) keep a copy or list of the income tax return or claim for refund. (See *Requirements for tax return preparers* on page 14.)

Failure to file electronically

Tax Law section 685(u)(5)

A penalty of \$50 for each return or extension that is not e-filed may be assessed against a preparer subject to the e-file mandate, unless the failure to e-file is due to reasonable cause. Reasonable cause includes, but is not limited to, your client's election not to e-file his or her return.

Aiding or assisting in the giving of fraudulent returns, reports, statements, or other documents

Tax Law section 685(r)

A penalty of \$5,000 may be assessed against a preparer for aiding or assisting in the giving of fraudulent returns, reports, statements or other documents.

Understatement of liability

Tax Law section 685(aa)

A penalty of up to \$1,000 will be imposed upon a preparer if

1. any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there is not or was not a reasonable belief that the tax treatment in that position was more likely than not the proper treatment;
2. the preparer with respect to the return or claim knew or reasonably should have known of that position; and
3. the position taken was not disclosed as provided in Tax Law section 685(p), or there was no reasonable basis for the tax treatment of that position.

The penalty of up to \$1,000 will not be imposed if it is shown that there is reasonable cause for the understatement and the preparer acted in good faith.

A penalty of up to \$5,000 will be imposed upon the preparer if any understatement of liability with respect to any return or claim for refund is due to a willful attempt to understate the liability for tax or any reckless or intentional disregard of rules or regulations by the preparer.

An understatement of liability means any understatement of the net amount payable with respect to any tax imposed under Article 22, or any overstatement of the net amount of credit or refund with respect to any such tax. The preparer penalty imposed under Tax Law section 685(aa) will not apply if the penalty under Tax Law section 685(r) is imposed on the preparer with respect to such understatement.

Failure to register

Tax Law sections 32(g)(1) and 1833

A penalty of \$250 will be imposed on a tax return preparer or facilitator that is required to register or re-register with the Tax Department and fails to do so. However, the penalty must be abated if the tax return preparer or facilitator complies with the registration requirements within 90 calendar days after notification of assessment of this penalty is sent by the Tax Department.

An additional penalty of \$500 will be imposed if the tax return preparer or facilitator continues to fail to register or re-register after the 90 calendar-day period if the failure is for not more than one month, with an additional \$500 for each additional month or fraction thereof during which the failure continues. Once the 90 days have expired, the penalty can be waived only if the tax return preparer or facilitator shows good cause.

In addition, a commercial tax return preparer who willfully and with the intent to evade the requirements of the Tax Preparer Registration Program fails to register as required by the program will be guilty of a class A misdemeanor.

Failure to pay annual registration fee

Tax Law section 32(g)(2)

A penalty of \$50 for each return that the preparer has filed with the Tax Department in the calendar year will be imposed if a commercial tax return preparer fails to pay the registration fee for a calendar year. However, the penalty must be abated if the commercial tax return preparer complies with the payment requirements within 90 calendar days after notification of the assessment of this penalty is sent by the Tax Department. The maximum penalty that may be imposed on any commercial tax return preparer for failure to pay the registration fee during any calendar year cannot exceed \$5,000. Once the 90 calendar-day period specified for this penalty has expired, the penalty can be waived only if the commercial tax return preparer shows good cause.

Failure to sign

Tax Law sections 32(g)(3) and 1833

A penalty of \$250 will be imposed for each failure to sign for a tax return preparer who fails to sign his or her name to any return that requires the tax return preparer's signature or a facilitator who fails to sign his or her name to any RAL or RAC facilitation document. However, the penalty may be waived if the tax return preparer or facilitator shows good cause.

The maximum penalty imposed on any tax return preparer with respect to returns filed during any calendar year by the tax return preparer or on any facilitator with respect to any RAL or RAC facilitation documents completed during any calendar year by the facilitator cannot exceed \$10,000. However, if a tax return preparer or facilitator was subject to this penalty for a preceding calendar year and the preparer or facilitator fails to sign his or her name on any return or document during a subsequent calendar year, the penalty for each failure will be \$500, and no annual cap will apply.

In addition, a commercial tax return preparer who willfully and with the intent to evade the requirements of the Tax Preparer Registration Program fails to sign his or her name to any tax return that requires a signature will be guilty of a class A misdemeanor.

Failure to include the NYTPRIN

Tax Law section 32(g)(4)

A penalty of \$100 will be imposed on a tax return preparer or a facilitator who fails to include the NYTPRIN assigned by the Tax Department on any required return or any RAL or RAC facilitation document that requires his or her signature for each failure. (See *Use of the registration certificate and the NYTPRIN* on page 9.) However, this penalty can be waived if the tax return preparer or facilitator shows good cause. The maximum penalty imposed under this paragraph on any tax return preparer or facilitator during any calendar year cannot exceed \$2,500. However, if a tax return

preparer or facilitator was subject to this penalty for a preceding calendar year and fails to include his or her NYTPRIN on one or more returns or documents during a subsequent calendar year, the penalty for each failure will be \$250, and no annual cap will apply.

Employment of an unregistered tax return preparer

Tax Law section 32(g)(5)

A penalty of \$500 per occurrence will be imposed if a tax return preparer, a facilitator, or a commercial tax return preparation business employs an individual to prepare tax returns who is not registered with the Tax Department and does not possess a valid tax preparer or facilitator registration certificate and NYTPRIN. This penalty can be waived if the tax return preparer or facilitator shows good cause.

Certain transactions and related information regarding tax shelters

The Tax law provides for reporting requirements with respect to the disclosure of information relating to transactions that present the potential for tax avoidance (a tax shelter). The Tax Law also imposes stiffer penalties for nondisclosure and the underpayment of taxes due to participation in these transactions.

For information relating to the disclosure of certain transactions and related information regarding tax shelters, see:

- TSB-M-05(2)C, (4)I, *Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*
- TSB-M-05(2.1)C, (4.1)I, *Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*
- TSB-M-05(2.2)C, (4.2)I, *Additional Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*
- TSB-M-07(4)C, (4)I, *Amendments to the Procedural Regulations Relating to New York Reportable Transactions*
- TSB-M-07(5)C, (5)I, *Notification of New York Listed Transaction – Certain Charitable Contribution Deductions*
- TSB-M-07(7)C, (6)I, *Extension of Tax Shelter Provisions*
- TSB-M-08(9)C, (4)I, *Extension of Tax Shelter Provisions*

New York State tax publications

New York State publications can be accessed on the Tax Department Web site. You may also request most of the

documents listed below by calling (518) 457-5431.

The following is a list of some of the income tax publications available:

- Publication 3, *A Guidebook of Resources for Tax Practitioners*
- Publication 10-W, *FAQs: New York State College Tuition Credit and Itemized Deduction – For tax year 2009*
- Publication 16, *New York Tax Status of Limited Liability Companies and Limited Liability Partnerships*
- Publication 20, *New York State Tax Guide for New Businesses*
- Publication 22, *FAQs: New York State’s Real Property Tax Credit for Homeowners and Renters - For tax year 2009*
- Publication 35, *New York Tax Treatment of S Corporations and Their Shareholders*
- Publication 46, *Common Reasons for Income Tax Adjustments*
- Publication 55, *Designated Private Delivery Services*
- Publication 75, *Specifications for Reproduction of Scannable and Nonscannable New York State Income Tax Forms and 2D Barcode Cover Sheets*
- Publication 80, *General Income Tax Information for New York State Residents*
- Publication 84, *New York State Handbook for E-filers of 2009 Personal Income Tax Returns*
- Publication 88, *General Tax Information for New York State Nonresidents and Part-Year Residents*
- Publication 94, *New York State Tax Information – Should You Be Paying Estimated Tax in 2010?*
- Publication 99-B, *General Information on New York State and New York City Income Tax Credits for Businesses – For tax year 2009*
- Publication 99-IND, *General Information on New York State and New York City Income Tax Credits for Individuals – For tax year 2009*

- Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*
- Publication 310-NY, *Information on New York's Earned Income Credits for tax year 2009*
- Publication 361, *New York State Income Tax Information for Military Personnel and Veterans*
- Publication 774, *Purchaser's Obligations to Pay Sales and Use Taxes Directly to the Tax Department: Questions and Answers*

For a complete list of New York State Tax Department publications, visit the Tax Department Web site (www.tax.ny.gov).

New York State Tax Department

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Access is available 24 hours a day, 7 days
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www.tax.ny.gov

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- check for new online services and features



Telephone assistance

Automated income tax refund status: (518) 457-5149

Personal Income Tax Information Center: (518) 457-5181

To order forms and publications: (518) 457-5431



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.