

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision (b) of section 372 of the General Business Law, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Procedural Regulations as published in Chapter IX of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York, such amendments to read as follows:

Section 1. A new Part 2398 is added to read as follows:

PART 2398
CONSUMER BILL OF RIGHTS REGARDING TAX PREPARERS
(Statutory Authority: General Business Law, Section 372(b))

Section 2398.1 Definitions and Applicability.

- (a) Definitions. (1) “Tax preparer” or “preparer” means a person, partnership, corporation, or other business entity that, in exchange for consideration, advises or assists or offers to advise or assist in the preparation of income tax returns for another.
- (2) “Department” means the Department of Taxation and Finance.
- (b) Applicability. The provisions of this Part do not apply to:
- (1) An officer or employee of a corporation or business enterprise who, in his or her capacity as such, advises or assists in the preparation of income tax returns relating to such corporation or business enterprise;
- (2) An attorney at law who advises or assists in the preparation of income tax returns in the practice of law, and the employees thereof;
- (3) A fiduciary who advises or assists in the preparation of income tax returns on behalf of

the fiduciary estate, testator, trustee, grantor, or beneficiaries thereof, and the employees thereof;

(4) A certified public accountant licensed pursuant to the Education Law or licensed by one or more of the states or jurisdictions of the United States, and the employees thereof;

(5) A public accountant licensed pursuant to the Education Law, and the employees thereof;

(6) 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 official duties;

(7) An agent enrolled to practice before the Internal Revenue Service pursuant to section 10.4 of subpart A of part ten of title thirty-one of the Code of Federal Regulations; or

(8) A tax preparer operating within New York City.

Section 2398.2 Consumer Bill of Rights.

(a) The Department shall produce and make available to taxpayers and tax preparers an informational publication regarding consumer's rights and laws concerning tax preparers, to be called a "Consumer Bill of Rights Regarding Tax Preparers" (hereinafter, "Consumer Bill of Rights"). This publication shall be easily reproducible by photocopy machines.

(b) The publication shall be available on the Department's internet website, and shall contain information including, but not limited to, the following:

(1) Postings required by state and federal laws, such as price posting and posting of qualifications;

(2) Explanations of some common services and terminology, such as preparation of short and long federal forms, electronic filing, express mail, direct deposit, refund anticipation loan, quick, instant, rapid, fast, fee, and interest;

(3) Basic information on what a tax preparer is and is not required to do for a consumer, such as the preparer's responsibility to sign a return, that a tax preparer may not be required to accompany a consumer to an audit but may have a voluntary policy to accompany consumers to audits;

- (4) Information a tax preparer is legally required to provide to consumers;
- (5) Practices in which a tax preparer is legally prohibited from engaging;
- (6) Information regarding the requirements of section 372 of the General Business Law relating to refund anticipation loans;
- (7) The telephone numbers of the Department for information and complaints;
- (8) Any additional information the Department deems appropriate regarding consumers' rights and laws concerning tax preparers.

Section 2398.3 Dissemination.

(a) A copy of the Consumer Bill of Rights shall be provided to individuals or businesses upon request to the Department, and shall be sent by the Department no later than October fifteenth of each year to each tax preparer who, to the Department's knowledge, has been found to be in violation of section 372 of the General Business Law within the previous calendar year.

(b) Each tax preparer subject to this Part shall obtain a current Consumer Bill of Rights from the Department and shall reproduce it so that it is clear and legible. As of January first of each year, each tax preparer shall give to each customer, free of charge, a current, legible copy of the Consumer Bill of Rights prior to discussion with the customer. Each such tax preparer shall also verbally direct the consumer to review the Consumer Bill of Rights and shall answer any questions the consumer may have about its contents.

Dated: Albany, New York
January 30, 2009

Robert L. Megna
Commissioner of Taxation and Finance