



## **Fact Sheet**

# **New York's First Tax Preparer Regulations**

Effective December 11, 2013

### **Applicability**

As a general rule, the new regulations apply to anyone who prepares a substantial portion of any tax return for compensation. Tax preparers who meet the eligibility criteria will be required to register with the New York State Tax Department.

The regulations impose additional requirements on “commercial tax return preparers,” defined as persons who:

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

Some individuals who prepare returns are exempt from the regulations:

- attorneys, public accountants, enrolled agents, certified public accountants, and their employees
- volunteer tax preparers and employees of a business or partnership whose job is to only prepare that business's or partnership's returns

### **Professional standards**

To ensure that New Yorkers receive quality tax preparation services, the department imposes the following requirements on commercial tax return preparers.

#### **Continuing Professional Education (CPE) requirements**

The regulations create two different continuing professional education requirements, depending on the experience of the preparer.

- Commercial tax return preparers with less than three years' experience are required to complete 16 hours of CPE coursework by the end of the first calendar year after the department has certified CPE providers. These individuals will have to complete four hours of CPE coursework each year thereafter.
- Commercial tax preparers with three or more years' experience must complete four hours of CPE coursework each year.

### **Competency exam**

- Commercial tax preparers must pass the IRS competency exam, if required for federal purposes.
- Commercial tax preparers must pass a New York State competency exam by the third calendar year after the exam is made available by the department.

## **Grounds for Denial of Tax Preparer Registration**

The Tax Department can deny the registration application of any tax preparer who does not meet the registration requirements, who is not in compliance with certain laws and obligations, or who is otherwise not in compliance with the regulations.

### **Registration requirements**

In order to successfully register, a preparer must:

- be at least 18 years of age, and possess a high school diploma or its equivalent
- fulfill continuing education and competency test requirements
- commercial tax return preparers must pay the registration fee

### **Compliance with laws and obligations**

The department will deny the application of preparers under the following circumstances:

- criminal conviction where there is a direct relationship between the conviction and the preparation of tax returns
- noncompliance with tax obligations.
- failure to comply with child support obligations.
- willful violation of the Tax Law
- failure to satisfy IRS requirements.
- adverse disciplinary actions within five years. Discipline must relate to tax return preparation, violation of trust or fiduciary obligations, or the misuse of confidential information.

### **Other conduct warranting denial**

The department may also deny registration applications for the following reasons:

- the issuance of a registration would involve an undue risk to property or the public welfare
- fraud or deceit as a preparer or with registration as a tax return preparer
- dishonest or unscrupulous behavior by a preparer

## **Discipline of Tax Return Preparers**

Preparers who do not comply with the regulations are subject to discipline by the department.

In addition, the department may coordinate with federal, state, and local taxing authorities; and professional licensing or other regulatory authorities to exchange information and make disciplinary referrals.

### **Conduct warranting discipline**

As in the case of registration denials, the department can discipline preparers who do not meet the registration requirements, who are not in compliance with certain laws and obligations, or who are otherwise unfit.

#### **Registration requirements**

Preparers who fail to register, pay the registration fee, or complete educational requirements can be disciplined.

#### **Compliance with laws and obligations**

Preparers who violate any law, regulation, or obligation related to tax preparation are subject to discipline. In addition, the following conduct can result in discipline:

- criminal convictions involving an unreasonable risk to property, safety or welfare
- adverse disciplinary actions in connection with conduct relating to tax preparation, a violation of trust or fiduciary obligations, misuse of confidential information
- failure to comply with child support obligations
- willful noncompliance with tax obligations

#### **Other conduct warranting discipline**

Preparers can also be disciplined for engaging in the following conduct:

- engaging in contemptuous conduct in connection with a return prepared by the preparer or in practice before the department regarding that return
- giving a false opinion, knowingly, recklessly, or through gross incompetence or engaging in a pattern of providing incompetent opinions on questions arising under federal, state, or local tax laws
- willfully using false or misleading representations to procure employment or intimating that the preparer is able to improperly obtain special consideration or action from the department or any officer or employee thereof
- providing false or misleading information to the department
- assisting noncompliance or tax evasion
- misappropriating client funds
- improperly influencing official actions
- aiding the practice by non-registered preparers
- willfully refusing to sign a return
- disclosing confidential information
- willful violation of the law including the Consumer Bill of Rights

## **Duties and responsibilities of tax return preparers**

The department imposes certain duties and responsibilities on preparers. A preparer that willfully, recklessly, or with gross incompetence fails to adhere to these duties and responsibilities may be subject to discipline.

### **Communication and interaction with the Tax Department**

A tax return preparer **must**:

- provide non-privileged available records to the department
- provide information concerning unavailable records
- promptly dispose of pending matters with the department where the preparer has prepared the subject return.

A tax return preparer **must not**:

- interfere with lawful efforts by the department
- participate in false, fraudulent, deceptive or misleading solicitation and advertising.
- willfully, recklessly, or through gross incompetence submit returns, or advise their clients to submit returns to the department that lack a reasonable basis
- take an unreasonable position or willfully attempt to understate the tax liability or is in reckless or intention disregard of the rules or regulations
- take a frivolous position or advise a client to take a frivolous position on a tax return, affidavit, or other document submitted to the department, whether in paper form or electronically
- seek assistance from persons whose registration has been refused, cancelled, or suspended

### **Communication and interaction with clients**

A tax return preparer **must**:

- make reasonable efforts to learn of client's omissions
- act diligently to ensure filed returns are accurate
- not charge unconscionable fees
- return client's records
- advise their clients of potential penalties.

A tax return preparer **must not**:

- endorse or otherwise negotiate any check or other form of payment issued to a client by the government in respect to a federal, state or local tax refund
- advise a client to submit a tax return, affidavit, or other paper or electronic document to the department, if the purpose is to delay or impede the administration of federal, state or local tax laws; the document or return contains a position that is frivolous; or the document or return contains or omits information in a manner that demonstrates an intentional disregard of a statute, regulation or established case law unless the preparer also advises the client to submit a document that evidences a good faith challenge to the statute, regulation or established case law.

- prepare a return for a client or represent a client before the department in a matter that would cause a conflict of interest with another of the preparer's clients unless both clients waive the conflict
- ignore the implications of information furnished to, or actually known by, the preparer, and must make reasonable inquiries if the information as furnished by the client appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete

In addition, any person, whether or not a tax return preparer, who has (or persons who have or share) principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds, or other documents by tax return preparers for submission to the department must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with the regulations.

### **Forms of discipline**

The department may discipline noncompliant preparers in the following ways:

- refusal, suspension or cancelation of a registration application
- denial, limitation, or placement of conditions on the preparer's right to prepare or file New York State tax returns. Such conditions may include placing the preparer on probation, or ordering the preparer to attend remedial educational classes before being allowed to prepare or file returns.