

Consumer Bill of Rights Regarding Tax Preparers

Chapter 432 of the laws of 2008 added Article 24-C to the General Business Law. Contained within Article 24-C is section 372 which is titled *Consumer Bill of Rights Regarding Tax Preparers*. 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 tax preparers to follow. The law is effective January 1, 2009.

This memorandum provides a description of Article 24-C.

Definitions

The following definitions apply to the consumer bill of rights regarding tax preparers:

- *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.
- *Refund Anticipation Loan (RAL)* means any loan a taxpayer may receive against his or her anticipated income tax refund.

Consumer bill of rights requirements regarding tax preparers

Tax preparers (except those listed in *Exempt preparers* on page 2) are subject to the following requirements under the General Business 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 (www.nystax.gov).

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, those tax preparers must give each customer a free copy of Publication 135 **before** any discussions with the customer. Preparers must direct each customer to review the publication and must answer any questions the customer may have regarding the content of the publication.

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.

Exempt preparers. Certain tax preparers are exempt from the requirement to provide a receipt with contact information and the requirement to give Publication 135 to potential customers. However, all tax preparers are subject to the requirements concerning RALs described in the next section.

The tax preparers that are exempt from the requirements regarding contact information and the Publication 135 are:

- 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).

Requirements concerning RALs

All tax preparers, **including** those listed in *Exempt preparers* above, are subject to the following requirements concerning 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 the following text in a disclosure statement to the taxpayer, in writing and in at least 14-point type:

You are not required to enter into this refund anticipation loan agreement merely because you have received this information.

If you do sign a contract for a refund anticipation loan, you will be taking out a loan. You will be responsible for repayment of the entire loan amount and all related costs and fees, regardless of how much money you actually receive in your tax refund.

If you do not take out this refund anticipation loan, you are eligible to receive a gross tax refund of approximately \$ (insert amount).

If you do take out this refund anticipation loan, you will be responsible to pay \$ (insert amount) in fees for the loan. After these fees are paid, you will receive approximately \$ (insert amount) as your loan.

The estimated annual percentage rate of your refund anticipation loan is (insert amount)%. This is based on the actual amount of time you will be lent money through this refund anticipation loan.

If you do take out this refund anticipation loan, you can expect to receive your loan within approximately two business days of (insert date).

If you do not take out this refund anticipation loan, you can still receive your tax refund quickly. If you file your tax return electronically and receive your tax refund through the mail, you can expect to receive your refund within two business days of (insert date). If you file your tax return electronically and have your refund directly deposited into a bank account, you can expect to receive your refund within approximately two business days of (insert date).

A tax preparer is obligated to complete the required disclosure accurately with all relevant information for each taxpayer. In addition, the completed disclosure form must be signed by the taxpayer before he or she enters into a RAL. The Tax Department will not provide the disclosure statement in an official form for tax preparer use.

Note: For purposes of the disclosure statement, the *insert amounts* and *insert dates* apply to the taxpayer's **federal** income tax refund.

Penalties

Any tax preparer who violates any provision in section 372 of Article 24-C of the General Business Law, or any regulation promulgated as a result of that section, is liable for a civil penalty of not less than \$250 but not more than \$500 for the first violation and, for each succeeding violation, a civil penalty of not less than \$500 but not more than \$750.

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 4 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).

Other requirements for tax preparers

For more information on further requirements for income tax preparers, see Publication 58, *Information for Income Tax Return Preparers*. The requirements in the consumer bill of rights regarding tax preparers are in addition to those already found in section 658(g) of the Tax Law.

(General Business Law Article 24-C and Tax Law section 658(g))

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. 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 presented in a TSB-M.