

Consumer Bill of Rights Regarding Tax Preparers

Article 24-C of the General Business Law establishes the Consumer Bill of Rights Regarding Tax Preparers. Article 24-C, which was added by Chapter 432 of the Laws of 2008 and amended by Chapter 59 of the Laws of 2009, 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.

This memorandum contains a full description of the Consumer Bill of Rights Regarding Tax Preparers as it applies to personal income tax returns prepared on or after January 1, 2010. The amendments contained in Chapter 59 of the Laws of 2009 added requirements for tax preparers relating to refund anticipation checks and refund anticipation loans. For a description of the law that applied to returns prepared in 2009, see TSB-M-08(7)I, *Consumer Bill of Rights Regarding Tax Preparers*, which was issued before the amendments made by Chapter 59 of the Laws of 2009.

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.
- *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
 - acts in any other manner that facilitates the making of a refund anticipation loan or refund anticipation check.

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

- *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 credit(s); 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.

Requirements under the Consumer Bill of Rights Regarding Tax Preparers

Tax preparers (except those listed in *Exempt preparers* below) 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, Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*, 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, 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 requirements under the Consumer Bill of Rights 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 from the requirement to give Publication 135 to potential customers. However, all tax preparers are subject to the requirements concerning RALs and RACs described in the next sections.

The following tax preparers are exempt from the requirements regarding contact information and 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 income 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 official 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 clearly and visibly state 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 your refund is delayed, you may have to pay additional costs.

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)."

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

A tax preparer is required to complete the 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 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.

Requirements concerning RACs

All tax preparers, **including** those listed in *Exempt preparers* above, are subject to the following requirements concerning RACs.

Before any taxpayer enters into an agreement to receive a refund anticipation check, the tax preparer facilitating the agreement must provide the following disclosure to the taxpayer in writing in at least 14-point type:

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

If you do take out this refund anticipation check, you will be responsible to pay \$ (insert amount) in fees for the check to be issued by (insert name of issuer of refund anticipation check). You can avoid this fee and still receive your refund in the same amount of time by having your refund directly deposited into your own bank account. You can also wait for the federal or state refund to be mailed to you.

If you do enter into this refund anticipation check agreement, you can expect to receive your check by approximately two business of (insert date).

If you do not enter into this refund anticipation check agreement, 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 approximately two business days of *(insert date)*. If you file your tax return electronically and have your tax refund directly deposited into a bank account, you can expect to receive your refund within approximately two days of *(insert date)*."

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

A tax preparer is required to complete the 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.

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

Penalties

Any tax preparer who violates any provision of the Consumer Bill of Rights Regarding Tax Preparers as contained 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. These penalties must be paid upon notice and demand and will be assessed, collected, and paid in the same manner as taxes under Tax Law Article 27 (relating to corporation taxes).

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, if you are within New York City, or 212-NEW-YORK, if you are outside New York City.

Other requirements for tax preparers

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 information relating to registration requirements for certain tax preparers and facilitators, visit the Tax Department's Web site (www.nystax.gov).

For general information on further requirements for income tax preparers, see Publication 58, *Information for Income Tax Return Preparers*. The requirements found 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.