

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

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Tax Preparer Registration Program

Section 32 has been added to the Tax Law by Chapter 59 of the Laws of 2009. 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. 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 new law includes certain requirements and restrictions on tax return preparers and facilitators, with significant penalties for those who do not comply. This memo provides an overview of these new requirements.

Definitions

The following definitions apply to the Tax Preparer Registration Program.

Attorney means an attorney admitted to practice law in New York State or one or more of the other states or jurisdictions of the United States.

Certified public accountant means an accountant licensed pursuant to section 7404 of the New York State Education Law or a similar law of one or more of the other states or jurisdictions of the United States.

Enrolled agent means a tax professional who has demonstrated special competence in tax matters, applied for enrollment, and has been issued an enrollment card by the Internal Revenue Service pursuant to Title 31 Code of Federal Regulations, Subtitle A, Part 10, Subpart A, Section 10.4.

Public accountant means an accountant licensed pursuant to section 7405 of the New York State Education Law or a similar law of one or more of the other states or jurisdictions of the United States.

Return means a return or report relating to a tax administered by the Tax Department.

Tax means any tax, fee, special assessment or other imposition administered by the Tax Department.

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

- enrolled agents;

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- 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, who are registered with or licensed by New York State, and employees preparing returns under the supervision of those attorneys, public accountants, and 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 3) and be subject to the registration requirements. An attorney, public accountant, or certified public accountant that 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. Also, an attorney, public accountant, or certified public accountant who is registered with or licensed in another state, but not in New York State, 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 4.)

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

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- 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.

Creditor means any person who makes a refund anticipation loan or who takes an assignment of a refund anticipation loan.

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* on page 4.)

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

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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 and fee requirements for tax return preparers and facilitators

Registration requirements

Each tax return preparer, as defined above, 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.nystax.gov using the Online Tax Center. Instructions will be 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 will be 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.

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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.

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Restrictions on tax return preparer 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 RACs and RALs. 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;

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- 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.

If a tax return preparer violates any one of the above provisions, the tax return preparer is subject to a penalty of \$500 for each violation in addition to the penalties listed in the following section.

Additional Penalties

Tax return preparers and facilitators may also be subject to the penalties described below if they fail to comply with the new registration requirements under Section 32 of the Tax Law. Since similar penalties were added to Section 32 of the Tax Law, the personal income tax penalties for failure to sign a return or claim for refund and failure to furnish an identifying number, formerly provided under Tax Law sections 685(u)(1) and (u)(2), have been repealed.

Failure to register

If a tax return preparer or facilitator is required to register or re-register with the Tax Department and fails to do so, the tax return preparer or facilitator is subject to a penalty of \$250. 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.

If the tax return preparer or facilitator continues to fail to register or re-register after the 90 calendar-day period, the tax return preparer or facilitator is subject to an additional penalty of \$500 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. (Tax Law section 32(g)(1))

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. (Tax Law section 1833)

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Failure to pay the registration fee

If a commercial tax return preparer fails to pay the registration fee for a calendar year, the commercial tax return preparer is subject to a penalty of \$50 for each return that the preparer has filed with the Tax Department in the 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. (Tax Law section 32(g)(2))

Failure to sign

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 is subject to a penalty of \$250 for each failure to sign. 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. (Tax Law section 32(g)(3))

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. (Tax Law section 1833)

Failure to include the NYTPRIN

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 is subject to a penalty of \$100 for each failure. (See *Use of the registration certificate and the NYTPRIN* on page 5.) 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

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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. (Tax Law section 32(g)(4))

Employment of an unregistered tax return preparer

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, then the tax return preparer, facilitator, or commercial tax return preparation business, as applicable, will be subject to a penalty of \$500 per occurrence. This penalty can be waived if the tax return preparer or facilitator shows good cause. (Tax Law section 32(g)(5))

Administration and collection of penalties

The penalties described above 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).

Additional information

If you have questions about the Tax Preparer Registration Program or need assistance with the registration process, contact our Call Center at (518) 457-1929 (in-state callers without free long distance call 1 866 579-2503).

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.