

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

TSB-M-09(14)C
TSB-M-09(16)I
TSB-M-09(13)M
TSB-M-09(5)MCTMT
TSB-M-09(11)R
TSB-M-09(21)S
All Taxes
December 22, 2009

**Amendment to the Definition of Tax Return Preparer for the
Tax Preparer Registration Program**

Chapter 503 of the Laws of 2009 amended the definition of *tax return preparer* in section 32 of the Tax Law. The definition is used to determine who needs to register for the Tax Preparer Registration Program. For a complete description of the program please see TSB-M-09(11)C, (9)I, 10(M), (3)MCTMT, (4)R, (15)S, *Tax Preparer Registration Program*.

The amendment applies in determining who must register as a tax return preparer for personal income tax returns prepared on or after December 31, 2009, and for returns prepared for taxes other than personal income taxes on or after December 31, 2010.

Description of change

Prior to the amendment, attorneys, public accountants, and certified public accountants were excluded from the definition of tax return preparer only if they were registered or licensed in New York State. After the amendment, attorneys, public accountants, and certified public accountants who are registered or licensed by any state in the United States are excluded from the definition.

In addition, the exclusion for employees preparing returns under the supervision of attorneys, public accountants, and certified public accountants was amended. Under the new law, to be excluded from the definition of tax return preparer, the individual has to be an employee of a law firm, public accounting firm, or certified public accounting firm and be preparing returns under the supervision of an attorney, a public accountant, or a certified public accountant in that firm. Prior to the amendment, the employer was not required to be a law firm, public accounting firm, or certified public accounting firm for the employee to qualify for exclusion.

Amended definition of tax return preparer

As amended, the definition of a tax return preparer is as follows:

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

- enrolled agents;
- 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

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- 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.
- the employees of a law firm, public accounting firm, or certified public accounting firm who prepare returns under the supervision of an attorney, public accountant, or certified public accountant in that firm. For purposes of this exclusion, a firm can be comprised of one or more attorneys, public accountants, or 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.
- employees of a tax return preparer or a commercial tax return preparation business who provide only clerical or other comparable services.

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