

REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS
DEPARTMENT OF TAXATION AND FINANCE

1. Effect of rule: The rule is applicable to tax return preparers required to register under section 32 of the Tax Law, whether or not associated with a small business. The continuing professional education (“CPE”) and competency exam requirements apply only to commercial tax return preparers (those who prepare 10 or more returns annually for compensation). The department does not have the information to estimate the number of small businesses that may be affected with any degree of certainty. However, the Report of the Task Force on Regulation of Tax Return Preparers estimates that for calendar year 2010, over 20,000 individuals registered and remitted the required fee for commercial tax return preparers, who are subject to the educational and testing requirements of the rule. Through July 20, 2011, over 17,000 individuals registered and remitted the fee. It may be assumed that a number of these commercial tax return preparers are associated with small businesses. Local governments are not affected.

2. Compliance requirements: The rule imposes minimal additional reporting requirements, forms, or other paperwork upon the regulated parties beyond those required by existing law and regulations. Commercial tax return preparers who must currently register under section 32 of the Tax Law will also be required to complete educational and testing requirements, and submit proof of completion to the department. This recordkeeping does not require any specific professional skills other than general recordkeeping skills already needed to own and operate a small business or to competently act as a tax return preparer. It is estimated that the necessary recordkeeping will take 30 minutes to 1 hour annually. (See Part 6 of the Regulatory Impact Statement.) The department believes that this rule will not impose any additional compliance requirements on tax return preparers associated with small businesses.

3. Professional services: No professional services will be required in order to comply with this rule.

4. Compliance costs: When the CPE and exam requirements of the rule are implemented, tax return preparers will incur certain associated costs. (See Part 4 of the Regulatory Impact Statement.) These costs include the cost of the preparer's time, CPE tuition, and competency exam fees. It is estimated that beginning tax return preparers will incur an initial annual cost of \$605 for CPE tuition and time spent completing CPE coursework. Beginning preparers who have satisfied their initial annual requirements, as well as experienced preparers, will incur an estimated annual cost of \$151. There will be an additional one-time cost of approximately \$31 for time spent completing the competency exam, plus a fee for taking the exam. These costs are necessary to protect taxpayers from unscrupulous and incompetent tax preparation, without imposing undue burdens on tax return preparers.

5. Economic and Technological Feasibility: The rule does not impose any adverse economic and technological requirements on small businesses or local governments.

6. Minimizing adverse impact: The rule does not distinguish between affected small businesses and other types of businesses as there is no distinction in the requirements imposed on such businesses. The rule places no burdens on small businesses beyond those imposed on individual registered tax return preparers. It imposes no burdens on local governments. Additionally, the educational and testing requirements of the rule are phased in over time, giving tax return preparers ample notice of their responsibilities and time to comply.

7. Small business and local government participation: The following organizations were given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division of Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Council of the New York State Business Council; the Retail Council of New York State; and

the New York Association of Convenience Stores. A draft of the regulation was sent to the participants in the Task Force on Regulation of Tax Return Preparers, which was composed of representatives from various agencies of the New York State, New York City, and United States governments, non-governmental representatives from the academic sector, the New York State Bar Association, the New York State Society of Certified Public Accountants, the New York State Society of Enrolled Agents, and the National Association of Tax Professionals, and other representatives of the tax return preparation industry.

8. For rules that either establish or modify a violation or penalties associated with a violation: The rule provides for a range of disciplinary measures sufficiently flexible to address deficiencies in knowledge or understanding through remediation, and to respond to unscrupulous conduct with harsher sanctions. As provided in Article 40 of the Tax Law, a tax return preparer who receives a notice of proposed disciplinary action may request a hearing before the Division of Tax Appeals as a matter of right. For these reasons, no cure period was included in the rule.

9. Initial review of the rule, pursuant to SAPA §207 as amended by L. 2012, ch. 462: The proposed initial review period for this rule is 5 years after the year in which it is adopted, rather than 3 years. The educational and testing requirements of the rule are to be phased in over time. The annual CPE requirement will not apply to tax return preparers until the calendar year immediately succeeding the date on which the department publishes a list of certified CPE providers or courses. The competency test requirement will first apply to registrations for the third calendar year following the date on which an exam has been made available. For these reasons, a three-year review period is insufficient to assess the practical application of the rule and determine whether modification is in order. The department invites public comment during the public comment period for the rule.