

## REGULATORY IMPACT STATEMENT

### DEPARTMENT OF TAXATION AND FINANCE

1. Statutory authority: Tax Law, sections 32, 171, subdivision First; and 697(a), and section 4 of Part VV of Chapter 59 of the Laws of 2009. Section 32 of the Tax Law, which was enacted by Chapter 59 of the Laws of 2009, sets forth registration and certain conduct requirements for registered tax return preparers. In addition, there are stated penalties for non-compliance with section 32 or regulations promulgated by the Commissioner. Section 171, subdivision First, provides for the Commissioner to make reasonable rules and regulations consistent with the law that may be necessary for the exercise of the Commissioner's powers and the performance of the Commissioner's duties under the Tax Law. Section 697(a) provides such authority specifically with respect to personal income taxes. Section 4 of Part VV required the Commissioner of Taxation and Finance to convene a Task Force on Regulation of Tax Return Preparers (the "Task Force") to prepare a report ("the Report") regarding the regulation of tax return preparers, and authorizes the Commissioner to promulgate regulations to implement any of the recommendations of the Task Force.

2. Legislative objectives: This rule is being proposed pursuant to this authority to implement certain of the recommendations of the Task Force set forth in its report dated September 28, 2011. The Report makes recommendations regarding the scope of the regulatory scheme and appropriate professional qualifications for tax return preparers, including, but not limited to, educational qualifications and continuing professional education requirements ("CPE").

3. Needs and benefits: The Task Force was charged with examining the need for additional oversight of tax return preparers and making recommendations regarding the scope of the regulatory scheme and appropriate professional qualifications. It was composed of state government representatives from the Department of Taxation and various other agencies. Representatives of the New York City Department of

Finance, New York City Department of Consumer Affairs, and the Internal Revenue Service (“IRS”) also participated. Non-governmental representatives included individuals 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, the National Association of Tax Professionals, and other representatives of the tax return preparation industry.

The Task Force, after reviewing several studies, as well as the regulatory frameworks of other states and the Internal Revenue Service (“IRS”), concluded that regulation of tax return preparers is necessary. The problems identified by the Task Force range from deficiencies in the general quality of tax preparation services stemming from limitations in knowledge and education to outright fraudulent conduct.

The Task Force balanced the need to protect taxpayers against the need to avoid imposing unnecessarily burdensome requirements on commercial tax return preparers (those who prepare 10 or more returns annually for compensation); it sought to make the requirements both reasonable and effective. The Report recommends that commercial tax return preparers who prepare New York State personal income tax returns be required to attain the following minimum qualifications:

- Meet any applicable IRS requirements;
- If new to the field of the preparation of New York State personal income tax returns, take a 16-hour basic tax course prior to preparing returns for compensation;
- Pass a New York State competency exam prior to preparing returns for compensation;
- Annually participate in 4 hours of continuing professional education (“CPE”) in New York State personal income tax topics, and;
- Be at least 18 years old and a high school graduate or equivalent.

The Report also recommends minimum standards of eligibility and conduct for tax return preparers. Violation of these standards could result in disciplinary measures including the denial of a new, or cancellation

of an existing registration. As noted in the rule, a tax return preparer who receives notice of disciplinary action may request a hearing before the Division of Tax Appeals under Article 40 of the Tax Law. The rule also outlines the procedures for providing tax return preparers with notice of disciplinary action.

The rule protects taxpayers from unscrupulous and incompetent tax preparation without imposing undue burdens on tax return preparers. The education, testing, and disciplinary provisions will enhance the competency and integrity of the tax preparation industry.

4. Costs: (a) Costs to regulated persons: When the CPE and exam requirements are implemented, the department estimates that it will take 50 minutes per credit hour to complete required courses, and 1 hour to complete the competency exam. No additional study should be required to prepare for the exam beyond the CPE coursework itself. Assuming a rate of \$31 per hour (equivalent to a Grade 18 New York State position), the initial cost for time spent by a beginning commercial tax return preparer will be approximately \$413. The estimated annual cost for time spent by these beginning preparers in subsequent years, and for experienced commercial tax return preparers, is approximately \$103. Commercial tax return preparers would incur an additional \$31 one-time cost for time expended to take the exam.

In addition to the time required for the CPE and testing requirements, there will be fees for required coursework. Prior to the decision in Loving v. IRS (U.S. District Court, District of Columbia, January 18, 2013), the IRS required preparers to complete CPE coursework. Based on the range of fees for such coursework, the department assumed a cost of \$12 per credit hour. This is on the high end of the range for most providers that offered IRS- required CPE. At \$12 per credit hour, beginning commercial tax return preparers will incur CPE fees of \$192, bringing their first year cost to approximately \$636, excluding exam fees. Experienced preparers will incur a one-time cost of approximately \$31 for time spent completing the exam, plus \$103 for time spent completing coursework, and approximately \$48 for course fees, for a total initial cost to experienced preparers of \$182, excluding exam fees.

(b) Costs to the agency and to the State and local governments for the implementation and continuation of this rule: The department estimates the cost for the implementation and continued administration of the rule to be \$776,300. A significant percentage of the functions necessary to administer and implement the rule are already being performed by staff in the various divisions of the department. An Office of Professional Responsibility (“OPR”) has been created, however, to perform certain new functions, such as developing training programs and monitoring training, as well as overseeing the overall coordination of various departmental divisions to implement and administer the rule.

The administration of the program will be performed largely by existing department staff, but it will be necessary to allocate additional staff to OPR. It is anticipated that outside vendors will provide CPE and administer the competency exams. The cost of outside vendor services is not known at this time.

OPR will require investigative and legal staffing. Anticipated “start-up” staffing requirements for this unit are as follows:

4 investigators—SG-18	\$ 205,100
2 Taxpayer Service Specialist 2—SG-18	\$130,400
½ Sr. Admin Analyst or Business Systems Analyst—SG-18	\$ 32,600
1 Taxpayer Service Specialist 3—SG-23	\$ 84,000
1 Attorney—SG—25	\$ 73,800
1 Taxpayer Service Specialist—SG-27	\$ 94,500
1 Secretary 2—SG—15	\$ 53,400
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	\$673,800

It is anticipated that the implementation and administration of the rule will also cause the department to incur approximately \$102,500 in additional expenses relating to the printing and mailing of forms.

(c) Information and methodology: These conclusions are based upon an analysis of the rule from the Department’s Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: The rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule imposes minimal additional reporting requirements, forms, or other paperwork upon the regulated parties beyond those required by existing law and regulations. 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. These recordkeeping requirements do 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. The IRS estimated that registered tax return preparers required to complete 15 hours of CPE would annually spend approximately 30 minutes to one hour in maintaining required records. 76 Fed. Reg. at 32,299. It is reasonable to assume that New York State beginning commercial tax return preparers initially required to complete 16 credit hours of CPE would need to dedicate a similar amount of time to maintaining records; the recordkeeping requirement thereafter and for experienced tax return preparers would be minimal, as only 4 credits of annual CPE would be required.

7. Duplication: There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

8. Alternatives: The Report recommends that its proposed standards of conduct should apply to all individuals who prepare tax returns for compensation, regardless of whether they are required to register under section 32 of the Tax Law, as amended. Section 32, however, excludes from the definition of “tax return preparer” attorneys, public accountants, certified public accountants, and enrolled agents. As previously noted, section 4 of Part VV of the Laws of 2009 required the Commissioner to convene a task force to determine the appropriate scope of a program for regulation of tax return preparers and commercial tax return preparers. The department concluded that it would be more appropriate to exclude from the ambit of the rule the same individuals excluded from the definition of tax return preparer under section 32. The rule provides that the

department will coordinate with other taxing authorities and professional licensing or other regulatory bodies to make disciplinary referrals with respect to such individuals.

In developing the rule, the department solicited feedback from various industry groups and associations (see Section 7 of the Regulatory Flexibility Analysis for Small Businesses and Local Governments) as well as participants in the Task Force. The department considered a suggestion that tax return preparers complete more hours of required annual CPE coursework, but deferred to the Task Force's conclusion that the current annual requirements strike the appropriate balance between protecting taxpayers and burdening registered tax return preparers. The Task Force reviewed the educational requirements of other states and the IRS, and concluded that its CPE recommendations would be effective and reasonable. Additionally, the rule provides that the department may require additional education of deficient preparers.

9. Federal standards: As this rule applies to preparers of New York State tax returns, it does not exceed any minimum standards of the Federal government for the same or similar subject area. Following the decision in Loving, supra, the tax return preparers to whom the rule applies are largely not subject to federal regulation with respect to preparation of federal returns.

10. Compliance schedule: The amendments will take effect when the Notice of Adoption is published in the *State Register*. The educational and testing provisions, however, will 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. Additionally, the department may initially limit the testing and education requirements to tax return preparers who prepare personal income tax returns in order to gain experience in administering the requirements before imposing them on other tax return preparers..