

SUBSTANCE OF THE PROPOSED RULE

DEPARTMENT OF TAXATION AND FINANCE

Section 32 of the Tax Law, enacted by Part VV of Chapter 59 of the Laws of 2009, sets forth the registration requirements for tax return preparers, as well as certain conduct requirements and penalties for non-compliance with section 32 or regulations promulgated by the Commissioner. 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.

This rule adds a new Part 2600 to 20 NYCRR 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 educational qualifications, continuing professional education requirements (“CPE”), and standards of conduct.

The rule provides that commercial tax return preparers (those who prepare 10 or more returns annually for compensation) who prepare New York State personal income tax returns must attain the following minimum qualifications:

- Meet any applicable IRS requirements;
- If new to the field of New York State personal income tax, 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 rule also provides minimum standards of conduct for registered tax return preparers. Violation of these standards could result in a range of disciplinary actions, from remedial education to suspension or cancellation of a preparer's registration. 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 outlines the procedures for providing tax return preparers with notice of disciplinary action.

The rule also repeals section 158.12(d)(1)(iv) of 20 NYCRR, which indicates that a person may be considered an income tax return preparer without regard to educational qualifications and professional status requirements, as new Part 2600 requires that registered tax return preparers satisfy minimum age, education, competency, and conduct requirements.

Credentialed tax return preparers (attorneys, certified public accountants, public accountants, and enrolled agents) are generally not subject to the requirements of new Part 2600; however, 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.

This rule is effective upon publication in the State Register. The educational and testing requirements, however, are to be phased in over time. Thus, 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.