

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
COMMISSIONER OF TAXATION AND FINANCE

Pursuant to the authority contained in sections 32, 171, subdivision First, and 697(a) of the Tax Law and section 4 of Part VV of Chapter 59 of the Laws of 2009, the Commissioner of Taxation and Finance hereby proposes to make and adopt the following amendments to the Personal Income Tax Regulations and the Procedural Regulations, as published in Chapters II and IX, respectively, of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York:

Section 1. Subparagraph (iv) of paragraph (1) of subdivision (d) of section 158.12 of such regulations is repealed and subparagraphs (v) through (ix) of such paragraph are renumbered to be subparagraphs (iv) through (viii).

Section 2. A new Part 2600 is added to read as follows:

PART 2600

Tax Return Preparer Requirements

(Statutory Authority: Tax Law §§32; 171, subdivision First; L.2009, ch. 59, Part VV)

Subpart 2600-1. Introduction.

Section 2600-1.1 General. (a) Applicability. Except as specifically provided in this Part, the provisions of this Part apply to any individual required to be registered as a tax return preparer under section 32 of the Tax Law.

(b) Coordination. The department may coordinate with federal, state, and local taxing authorities and professional licensing or other regulatory bodies to exchange information and make disciplinary referrals

regarding the conduct of any individual who prepares a substantial portion of a tax return for compensation, irrespective of whether that individual is required to be registered under section 32 of the Tax Law.

Subpart 2600-2. Standards of eligibility for registered tax return preparers.

Section 2600-2.1 Grounds for denial of registration as a tax return preparer. The Commissioner of Taxation and Finance may refuse to issue a tax return preparer registration under section 32 of the Tax Law to an applicant, or may issue a registration subject to conditions and limitations, when the commissioner ascertains the existence of any of the following circumstances:

(a) Noncompliance with tax obligations. The applicant has failed to comply fully with his or her own federal, state or local tax obligations in a timely fashion, including but not limited to failing to file any required tax return or report, or unreasonably failing to pay or make acceptable arrangements to pay any tax finally due and owing under the Tax Law.

(b) Criminal convictions. The applicant has been convicted of any federal or state offense and there is a direct relationship between the criminal offense or offenses for which the applicant was convicted, or the conduct underlying those offenses, and tax return preparation practice; or the issuance of the registration would involve an unreasonable risk to the property, safety or welfare of specific individuals or the general public and the commissioner has given due consideration to the factors set forth in Corrections Law, section 753.

(c) Adverse disciplinary actions. The applicant has, within the preceding five years, been the subject of any adverse finding, settlement imposing compliance terms, or sanction by any federal, state or local agency or other disciplinary or licensing organization or board in any administrative action in connection with conduct relating to tax return preparation or involving dishonesty or fraud, a violation of trust or of fiduciary obligations, or misuse of confidential information, or the tax return preparer has failed to comply with his or her child support obligations and a court has issued an order to the Department of Taxation and Finance pursuant to section 458-b of the Family Court Act.

(d) Willful violation of the Tax Law. The applicant has willfully violated, or conspired with or willfully aided or counseled another to violate, any provision of the Tax Law or any regulation promulgated by the commissioner.

(e) Fraud or deceit as a preparer. The applicant has engaged in fraud or deceit in connection with his or her tax return preparation activities or in connection with his or her application to register as a tax preparer.

(f) Dishonest or unscrupulous behavior. The applicant has engaged in acts of dishonesty, fraud, deceit or other unscrupulous conduct of such character that the applicant has failed to demonstrate sufficient trustworthiness to be a tax return preparer.

(g) Failure to register or pay registration fee. The applicant has failed to fully and truthfully complete the registrant application, pay any required registration fee or fully and truthfully respond to any lawful inquiries of the department in connection with that application.

(h) Internal Revenue Service requirements. The applicant has not satisfied applicable Internal Revenue Service requirements pertaining to tax return preparers.

(i) Continuing education and competency examination requirements. The applicant has not satisfied Continuing Professional Education ("CPE") or competency examination requirements applicable to New York State registered tax return preparers

(j) Minimum age and education requirements. The applicant is not at least 18 years old or does not have a high school diploma or equivalent (e.g., GED).

(k) Grounds for discipline. Any of the grounds for discipline under section 2600-3.1 of this Part apply.

Section 2600-2.2 Continuing Professional Education requirements. (a) CPE. For the calendar year immediately succeeding the date on which the department publishes a list of certified CPE providers and/or software or other media and subsequent calendar years, registered commercial tax return preparers shall be required to satisfy annual CPE requirements, to be completed on or before the end of the calendar year.

Beginning commercial tax return preparers (with less than 3 years experience preparing New York State tax returns) shall complete 16 credit hours of CPE coursework by the end of their first calendar year as a commercial tax return preparer or, if later, by the end of the first calendar year for which the department has certified CPE providers and/or software or other media through published forms, instructions or other guidance, and 4 credit hours annually thereafter. Experienced commercial tax return preparers (with more than 3 years' experience preparing New York State tax returns) shall complete 4 hours of accredited CPE annually.

(b) Limitations. The department may initially limit the requirements of this section to commercial tax return preparers who prepare income tax returns (commercial income tax return preparers) and subsequently impose the requirements on other tax return preparers.

Section 2600-2.3 Competency examinations. (a) Examination requirements. As a condition to becoming a registered tax return preparer, a commercial tax return preparer shall:

(1) pass the Internal Revenue Service registered tax return preparers competency examination, if required for federal purposes; and

(2) pass a New York State tax competency examination certified by the department, provided that this requirement shall first apply to the registrations for the third calendar year following the date on which an exam has been made available by the department.

(b) Limitations. The department may initially limit the requirements of this section to commercial tax return preparers who prepare income tax returns (commercial income tax return preparers) and subsequently impose the requirements on other tax return preparers.

Section 2600-2.4 Certification of continuing professional education courses, software, and providers. The department shall identify accredited CPE courses, providers, and/or software or other media acceptable for use in satisfying the CPE requirements for registered tax return preparers.

Subpart 2600.3. Standards of conduct.

Section 2600-3.1 Grounds for discipline of tax return preparers. Grounds for discipline exist when the commissioner determines that a tax return preparer has been shown:

(a) to be incompetent or disreputable within the meaning of Subpart 2600-5 of this Part;

(b) to have willfully, recklessly or with gross incompetence failed to comply with any section of this Part governing the conduct of tax return preparers or any other applicable regulation or statute governing the conduct of individuals who prepare New York tax returns; or

(c) with intent to defraud, to have willfully and knowingly misled or threatened a client or prospective client.

Section 2600-3.2 Best practices. The best practices set forth in section 2600-4.3(k) of this Part are statements of practices for all tax return preparers to aspire to achieve. A violation of a best practice will not alone constitute an act of misconduct by the preparer sufficient to support a disciplinary action.

Section 2600-3.3 Forms of discipline. When there are grounds for discipline under section 2600-3.1 of this Part, then, in addition to or in lieu of imposing any penalties or other sanctions that may apply pursuant to law, the commissioner may: (a) refuse to issue, issue subject to conditions, or suspend or cancel a registration under Tax Law §32; or

(b) deny the preparer the right to prepare or file, or impose limitations or conditions on the preparer's ability to prepare or file, New York tax returns in the future. Such conditions may include placing the preparer on probation, or ordering the preparer to attend remedial educational classes before being allowed again to prepare or file New York returns.

Section 2600-3.4 Definitions. (a) Reckless conduct. Reckless conduct is a highly unreasonable action, omission or misrepresentation involving an extreme departure from the standards of ordinary care that a tax return preparer should observe under the circumstances. A pattern of conduct is a factor that will be taken into account in determining whether a preparer acted knowingly, recklessly, or through gross incompetence.

(b) Gross incompetence. Gross incompetence includes conduct that reflects gross indifference, tax return preparation or tax practice that is grossly inadequate under the circumstances, or a consistent failure to perform obligations to the client.

Subpart 2600-4. Duties and Responsibilities of Tax Return Preparers

Section 2600-4.1 Information to be furnished to the department. (a) Available records. A tax return preparer must, upon a proper and lawful request by a duly authorized officer or employee of the department, promptly submit records or information in any matter before the department related to a return prepared by the preparer unless the preparer believes in good faith and on reasonable grounds that the records or information are privileged or otherwise not subject to compulsory production pursuant to subpoena.

(b) Unavailable records. Where the requested records or information are not in the possession of, or subject to the control of, the tax return preparer or the preparer's client, the preparer must promptly notify the requesting officer or employee and the preparer must provide any information that the preparer has regarding the identity of any person who the preparer believes may have possession or control of the requested records or information. The preparer must make reasonable inquiry of his or her client regarding the identity of any person who may have possession or control of the requested records or information, but the preparer is not required to make inquiry of any other person or independently verify any information provided by the preparer's client regarding the identity of such persons.

Section 2600-4.2 Interference. A tax return preparer may not interfere, or attempt to interfere, with any proper and lawful effort by the department, its officers or employees, to obtain any record or information in connection with a return prepared by the tax return preparer unless the preparer believes in good faith and on reasonable grounds that the record or information is privileged or not otherwise subject to compulsory production by subpoena.

Section 2600-4.3 Duties. (a) Knowledge of client's omission. A tax return preparer who, having been retained by a client with respect to a matter administered by the department, knows that the client has not complied with the tax and revenue laws of the United States or any state or local government or has made an error in or omission from any return, document, affidavit, or other form which the client submitted or executed under the tax and revenue laws of the United States or any state or local government, must advise the client promptly of the fact of such noncompliance, error, or omission. The preparer must advise the client of the consequences as provided under the applicable federal, state or local laws and regulations of such noncompliance, error, or omission. A preparer who knows that a return or document that has been prepared for filing contains an error or omission, may not sign, submit or file that return or document with the department, by electronic means or otherwise.

(b) Diligence as to accuracy. (1) Due diligence. In connection with any return prepared by the tax return preparer, the preparer must exercise due diligence:

(i) in preparing or assisting in the preparing, approving, and filing of tax returns, documents, affidavits, and other papers relating to the return;

(ii) in determining the correctness of oral or written representations made by the preparer regarding the return to the department; and

(iii) in determining the correctness of oral or written representations made by the preparer to clients with reference to any matter administered by the department in connection with the return.

(2) Presumption of due diligence. A tax return preparer will be presumed to have exercised due diligence for purposes of this subdivision if the preparer relies on the work product of another person and the preparer used reasonable care in engaging, supervising, training, and evaluating the person, taking proper account of the nature of the relationship between the preparer and the person.

(c) Prompt disposition of pending matters. A tax return preparer may not unreasonably delay the prompt disposition of any matter before the department relating to a return prepared by the preparer.

(d) Assistance from or to persons whose registration has been refused, cancelled, or suspended. A tax return preparer may not, directly or indirectly, knowingly accept assistance from or assist any person who has been refused registration as a tax return preparer, or whose registration has been cancelled or suspended, if the assistance relates to the preparation of a New York State tax return other than the return of the person whose registration has been refused, cancelled, or suspended.

(e) Fees, notaries and check cashing. (1) Fees. A tax return preparer may not charge an unconscionable fee in connection with any matter before the department relating to a return prepared by the preparer. For purposes of this paragraph, a fee is unconscionable if the amount of the fee is either excessive or unreasonable based on all of the relevant facts and circumstances, including the complexity of the underlying issue or issues to be addressed with respect to the matter and the time required to resolve the matter before the department.

(2) Notaries. A tax return preparer may not take acknowledgments, administer oaths, certify papers, or perform any official act as a notary public with respect to any matter administered by the department and for which he or she is employed as a tax return preparer.

(3) Negotiating taxpayer checks. A tax return preparer may not endorse or otherwise negotiate any check or other form of payment issued to a client by the government in respect to a federal, state or local tax refund.

(f) Return of client's records. (1) General. In general, a tax return preparer must, at the request of a client, promptly return any and all records of the client that are necessary for the client to comply with his or her federal, state or local tax obligations. The preparer may retain copies of the records returned to a client. The existence of a dispute over fees generally does not relieve the preparer of his or her responsibility under this section.

(2) Records of the client defined. For purposes of this section, records of the client include all documents or written or electronic materials provided to the tax return preparer, or obtained by the preparer in the course of the preparer's representation of the client, that preexisted the retention of the preparer by the client. The term also includes materials that were prepared by the client or a third party (not including an employee or agent of the preparer) at any time and provided to the preparer with respect to the subject matter of the representation. The term also includes any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the preparer, or his or her employee or agent, that was presented to the client with respect to a prior representation if such document is necessary for the taxpayer to comply with his or her current federal, state or local tax obligations. The term does not include any return, claim for refund, schedule, affidavit, appraisal or any other document prepared by the preparer or the preparer's firm, employees or agents if the preparer is withholding such document pending the client's performance of its contractual obligation to pay fees with respect to such document.

(g) Conflicting interests. (1) General. Except as provided by paragraph (2) of this subdivision, a tax return preparer shall not prepare a return for a client or represent a client before the department in a matter involving a return prepared by the preparer if the preparer's involvement in the matter involves a conflict of interest. A conflict of interest exists if:

(i) The representation of one client will be directly adverse to another client; or

(ii) There is a significant risk that the representation of one or more clients will be materially limited by the tax return preparer's responsibilities to another client, a former client or a third person, or by a personal interest of the preparer.

(2) Waiver. Notwithstanding the existence of a conflict of interest under paragraph (1) of this subdivision, the tax return preparer may prepare a return or represent a client in connection with a return prepared by the preparer if:

(i) The preparer reasonably believes that the preparer will be able to provide competent and diligent representation to each affected client;

(ii) The representation is not prohibited by law; and

(iii) Each affected client waives the conflict of interest and gives informed consent, confirmed in writing by each affected client, at the time the existence of the conflict of interest is known by the preparer. The confirmation may be made within a reasonable period of time after the informed consent, but in no event later than 90 days. Copies of the written consents must be retained by the preparer for at least 36 months from the date of the conclusion of the representation of the affected clients, and must be provided to any officer or employee of the department on request.

(h) Submission of tax returns, affidavits and other documents to the department. (1) General. A tax return preparer may not willfully, recklessly, or through gross incompetence,

(i) Sign a tax return or claim for refund that the tax return preparer knows or reasonably should know contains a position that,

“(a)” Lacks a reasonable basis;

“(b)” Is an unreasonable position; or

“(c)” Is a willful attempt by the tax return preparer to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the tax return preparer.

(ii) Advise a client to take a position on a tax return or claim for refund, or prepare a portion of a tax return or claim for refund containing a position that,

“(a)” Lacks a reasonable basis;

“(b)” Is an unreasonable position; or

“(c)” Is a willful attempt by the tax return preparer to understate the liability for tax or a reckless or intentional disregard of rules or regulations by the tax return preparer.

(2) Pattern of conduct. A pattern of conduct is a factor that will be taken into account in determining whether a tax return preparer acted willfully, recklessly, or through gross incompetence.

(3) Frivolous position. A tax return preparer may not take a frivolous position or advise a client to take a frivolous position on a tax return, affidavit, or other document submitted to the department, whether in paper form or electronically.

(4) Advice regarding submissions. A preparer may not advise a client to submit a tax return, affidavit, or other paper or electronic document to the department, if in connection with the document,

(i) The purpose is to delay or impede the administration of federal, state or local tax laws;

(ii) The document or return contains a position that is frivolous; or

(iii) The document or return contains or omits information in a manner that demonstrates an intentional disregard of a statute, regulation or established case law unless the preparer also advises the client to submit a document that evidences a good faith challenge to the statute, regulation or established case law.

(5) Advice regarding penalties. Advising clients on potential penalties. (i) A preparer must inform a client of any penalties that are reasonably likely to apply to the client with respect to:

“(a)” A position taken on a tax return if:

“(1)” The preparer advised the client with respect to the position; or

“(2)” The preparer prepared or signed the tax return; and

“(b)” Any tax return, affidavit, or other paper or electronic document prepared or signed by the preparer and submitted to the department.

(ii) The preparer also must inform the client of any opportunity to avoid any such penalties by disclosure, if relevant, and of the requirements for adequate disclosure.

(6) Relying on information furnished by clients. A tax return preparer advising a client to take a position on a tax return, document, affidavit or other paper or electronic submission to the department, or preparing or signing a tax return as a preparer, generally may rely in good faith without verification upon information furnished by the client. The preparer may not, however, ignore the implications of information furnished to, or actually known by, the preparer, and must make reasonable inquiries if the information as furnished appears to be incorrect, inconsistent with an important fact or another factual assumption, or incomplete.

(7) Responsibility of persons with principal authority. Any person, whether or not a tax return preparer, who has (or persons who have or share) principal authority and responsibility for overseeing a firm's practice of preparing tax returns, claims for refunds, or other documents by tax return preparers for submission to the department must take reasonable steps to ensure that the firm has adequate procedures in effect for all members, associates, and employees for purposes of complying with this Part. Any such person who has (or persons who have or share) this principal authority will be subject to discipline for failing to comply with the requirements of this paragraph if,

(i) The person through willfulness, recklessness, or gross incompetence does not take reasonable steps to ensure that the firm has adequate procedures to comply with this Part, and one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, of failing to comply with this Part; or

(ii) The person knows or should know that one or more individuals who are members of, associated with, or employed by, the firm are, or have, engaged in a pattern or practice, in connection with their practice with the firm, that does not comply with this Part, and the person, through willfulness, recklessness, or gross incompetence fails to take prompt action to correct the noncompliance.

(i) Requirements for written advice. (1) Any written advice (including by means of electronic communication) given by a tax return preparer concerning one or more federal, state, or local tax matters is subject to the requirements of this subdivision.

(2) The tax return preparer must,

(i) Base the written advice on reasonable factual and legal assumptions (including assumptions as to future events);

(ii) Reasonably consider all relevant facts and circumstances that the tax return preparer knows or reasonably should know;

(iii) Use reasonable efforts to identify and ascertain the facts relevant to written advice on each tax matter;

(iv) Not rely upon representations, statements, findings, or agreements (including projections, financial forecasts, or appraisals) of the taxpayer or any other person if reliance on them would be unreasonable;

(v) Relate applicable law and authorities to facts: and

(vi) Not, in evaluating a tax matter, take into account the possibility that a tax return will not be audited or that a matter will not be raised on audit.

(3) Reliance on representations, statements, findings, or agreements is unreasonable if the tax return preparer knows or reasonably should know that one or more representations or assumptions on which any representation is based are incorrect, incomplete, or inconsistent.

(4) A tax return preparer may only rely on the advice of another person if the advice was reasonable and the reliance is in good faith considering all the facts and circumstances. Reliance is not reasonable when,

(i) The tax return preparer knows or reasonably should know that the opinion of the other person should not be relied on;

(ii) The tax return preparer knows or reasonably should know that the other person is not competent or lacks the necessary qualifications to provide the advice; or

(iii) The tax return preparer knows or reasonably should know that the other person has a conflict of interest in violation of rules described in this Part.

(5)(i) In evaluating whether a tax return preparer giving written advice concerning one or more tax matters complied with the requirements of this section, the department will apply a reasonable tax return preparer standard, considering all facts and circumstances, including, but not limited to, the scope of the engagement and the type and specificity of the advice sought by the client.

(ii) In the case of an opinion the tax return preparer knows or has reason to know will be used or referred to by a person other than the tax return preparer (or a person who is a member of, associated with, or employed by the tax return preparer's firm) in promoting, marketing, or recommending to one or more taxpayers a partnership or other entity, investment plan or arrangement a significant purpose of which is the avoidance or evasion of any tax, the department will apply a reasonable tax return preparer standard, considering all facts and circumstances, with emphasis given to the additional risk caused by the tax return preparer's lack of knowledge of the taxpayer's particular circumstances, when determining whether a tax return preparer has failed to comply with this subdivision.

(j) Solicitation and advertising. A tax return preparer may not, with respect to conduct as a tax return preparer, in any way use or participate in the use of any form of public communication or private solicitation containing a false, fraudulent, deceptive, misleading or coercive statement or claim.

(k) Best practices. Tax return preparers should provide clients with the highest quality representation concerning federal, state and local tax issues by adhering to best practices in providing advice and in preparing or assisting in the preparation of a submission to the department. The best practices set forth in this subdivision are statements of practices for all tax preparers to aspire to achieve. A violation of a best practice defined in this

subdivision will not alone constitute an act of misconduct by the preparer sufficient to support a disciplinary action but such a violation, especially if indicative of a pattern of conduct, may be considered in determining whether a disciplinary rule set forth in the other sections of these standards has been violated. In addition to compliance with the standards of practice provided elsewhere in this part, best practices include the following:

(1) Communication. Communicating clearly with the client regarding the terms of the engagement. For example, the preparer should determine the client's expected purpose for and use of the advice and should have a clear understanding with the client regarding the form and scope of the advice or assistance to be rendered.

(2) Applying law and facts. Establishing the facts, determining which facts are relevant, evaluating the reasonableness of any assumptions or representations, relating the applicable law (including potentially applicable judicial doctrines) to the relevant facts, and arriving at a conclusion supported by the law and the facts.

(3) Advice. Advising the client regarding the import of the conclusions reached.

(4) Actions. Acting fairly and with integrity in practice before the department.

Subpart 2600-5. Incompetence and Disreputable Conduct.

Section 2600-5.1 Sanctionable conduct. Incompetence and disreputable conduct for which a tax return preparer may be sanctioned includes, but is not limited to:

(a) Criminal convictions. Conviction of any federal or state criminal offense when there is a direct relationship between the criminal offense or offenses for which the applicant was convicted, or the conduct underlying those offenses, and tax return preparation or tax practice; or when issuance or continuation of the tax return preparer's registration, or continuing to permit the preparer to appear before the department, would involve an unreasonable risk to property, safety or welfare of specific individuals or the general public and the commissioner has given due consideration to the factors set forth in Corrections Law, section 753.

(b) Adverse disciplinary actions. Being the subject of any adverse finding, settlement imposing compliance terms, or sanction by any federal, state or local agency or other disciplinary or licensing organization or board in any administrative action in connection with conduct relating to tax return preparation or tax practice or involving dishonesty or fraud, a violation of trust or of fiduciary obligations, or misuse of confidential information, or the tax return preparer has failed to comply with his or her child support obligations and a court has issued an order to the department pursuant to section 458-b of the Family Court Act.

(c) False or misleading information or submissions. Giving false or misleading information, or participating in any way in the giving of false or misleading information to the department or any officer or employee thereof, or to any tribunal authorized to pass upon New York State tax matters, in connection with any matter pending or likely to be pending before them, knowing the information to be false or misleading. Facts or other matters contained in testimony, federal, state or local tax returns, financial statements, applications, registrations, affidavits, declarations, and any other document or statement, written or oral, are included in the term “information.”

(d) Willful noncompliance with tax obligations. Willfully failing to comply fully with his or her own federal, state or local tax obligations in timely fashion, including but not limited to failing to file any required tax return or report, or failing to pay, or make acceptable arrangements to pay, any tax due and owing under the Tax Law or applicable regulations, or willfully and illegally evading, attempting to illegally evade, or participating in any way in illegally evading or attempting to illegally evade any assessment or payment of any federal, state, or local tax obligation.

(e) Assisting noncompliance or tax evasion. Willfully assisting, counseling, encouraging a client or prospective client in violating, or suggesting to a client or prospective client to violate, any federal, state, or

local tax law, or knowingly counseling or suggesting to a client or prospective client an illegal plan to evade federal, state, or local taxes or payment thereof.

(f) Misappropriating client funds. Misappropriation of, or failure properly or promptly to remit, funds received from a client for the purpose of payment of taxes or other obligations due the federal or any state or local government.

(g) Improperly influencing official actions. Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the department by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of an advantage or by the bestowing of any gift, favor or thing of value.

(h) Aiding practice by non-registered preparers. Hiring, employing or otherwise aiding and abetting another person to engage in the practice of tax return preparation, when the preparer knew, or should have known, that such other person was not registered as a tax return preparer in a jurisdiction in which such person was legally required to be registered or when that person's registration as a tax return preparer has been suspended or cancelled.

(i) Contemptuous conduct. Engaging in contemptuous conduct in connection with a return prepared by the preparer or in practice before the department regarding that return, including the use of abusive language, making false accusations or statements to the department, knowing them to be false, or circulating or publishing malicious or libelous matter.

(j) False and misleading opinions. Giving a false opinion, knowingly, recklessly, or through gross incompetence, including an opinion which is intentionally or recklessly misleading, or engaging in a pattern of providing incompetent opinions on questions arising under federal, state, or local tax laws. False opinions described in this subdivision include those which reflect or result from a knowing misstatement of fact or law, from an assertion of a position known to be unwarranted under existing law, from counseling or assisting in

conduct known to be illegal or fraudulent, from concealing matters required by law to be revealed, or from consciously disregarding information indicating that material facts expressed in the opinion or offering material are false or misleading.

(k) Willful failure to sign a return. Willfully failing to sign a tax return prepared by the preparer when the preparer's signature is required by federal, state or local tax laws unless the failure is due to reasonable cause and not due to willful neglect.

(l) Disclosure of confidential information. Willfully or recklessly disclosing or otherwise using a tax return or tax return information in a manner not authorized by federal or state law or otherwise disclosing confidential information obtained in the course of a professional engagement unless such disclosure was with the consent of the client, in the course of dealing with tax authority, as required by law, or otherwise permitted under relevant professional standards.

(m) Willful violation of the law. Willfully violating, or conspiring with or aiding or counseling another to violate any provision of the Tax Law or any regulation promulgated by the commissioner or any other applicable law or regulation governing the conduct of tax return preparers in New York, including, as applicable, the provisions of section 372 of the General Business Law regarding the Consumer Bill of Rights Regarding Tax Preparers.

(n) Failure to register, pay required fee, or complete educational requirements. If required by law, failing to register timely as a tax preparer, pay the tax preparer registration fee, or complete any educational requirements imposed on such individuals in New York.

(o) False or misleading representations. Willfully using false or misleading representations to procure employment or intimating that the preparer is able to improperly obtain special consideration or action from the department or any officer or employee thereof.

Subpart 2600-6. Procedures.

Section 2600-6.1 Review of disciplinary action. A tax return preparer who receives a notice of a cancellation, revocation or suspension of a license, permit, or registration, a denial of an application for a license, permit or registration or any other disciplinary action may request a hearing as a matter of right pursuant to Article 40 of the Tax Law. A conciliation conference shall be provided pursuant to section 170 of the Tax Law to any tax return preparer subject to disciplinary action, at his or her option, provided that the time to petition for a hearing before the Division of Tax Appeals has not elapsed.

Section 2600-6.2 Notification of cancellation, suspension, refusal to register, or other disciplinary action. (a) Issuance of notice. A notice of proposed cancellation or suspension of registration, a notice of proposed refusal to register, or a notice of other disciplinary action imposed on a tax return preparer under this Part will be sent electronically to the tax return preparer's online services account. For a tax return preparer who does not have an online services account, the notice may be sent by certified or registered mail to the tax return preparer at his or her last known address reflected on the application for registration as a tax return preparer or, if no application is on file, then to the last known address the department is able to locate for the tax return preparer. The notification will outline the basis for disciplinary action and inform the recipient that such action may be protested through a hearing process and that a petition for such protest must be filed within a specified number of days after the date of the notice, in keeping with Article 40 of the Tax Law. Where a timely petition for a hearing to protest a proposed disciplinary action is made, a hearing will be scheduled and conducted in accordance with the Tax Appeals Tribunal's procedures.

(b) Statute of limitations. Unless acts involving falsity or fraud are at issue, a notice of proposed disciplinary action against a tax return preparer must be issued within five years from the date of the act or omission which formed the basis for such disciplinary action. Where acts involving falsity or fraud are at issue, such notices may be issued at any time.

Section 2600-6.3 Complaint Procedures. The department may establish and make publicly available by

instructions or other guidance procedures for filing complaints regarding tax return preparers.

Thomas H. Mattox
Commissioner of Taxation and Finance

Dated: Albany, New York
August 29, 2013