

INFORMATION FOR INCOME TAX RETURN PREPARERS

For tax year 2007



The information presented is current as of this publication's print date. Visit our Web site at www.nystax.gov for up-to-date information.

NOTE: A Publication is an informational document that addresses a particular topic of interest to taxpayers. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in Department policies could affect the validity of the information contained in a publication. Publications are updated regularly and are accurate on the date issued.

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Introduction

This publication discusses the rules, including the electronic filing (*e-file*) mandate, that are applicable to tax return preparers of New York State personal income tax returns (including partnership and fiduciary returns).

For additional information that may be of interest to you as a preparer, see the *Practitioners* page on the Tax Department's Web site (www.nystax.gov) and Publication 3, *A Guidebook of Resources For Tax Practitioners*.

Tax return preparer defined

Tax Law section 658(g)(5)

For personal income tax purposes, a *tax return preparer* (preparer) is any person who prepares any return or claim for refund for compensation, or who employs or engages anyone to prepare any return or claim for refund for compensation.

Requirements for tax return preparers

Tax Law section 658(g)

A preparer must comply with certain requirements with respect to income tax returns and claims for refund prepared by the preparer. A preparer must:

- *E-file* returns if certain criteria are met (see *Electronic filing (e-file) mandate for tax return preparers* on page 6).
- Sign the income tax return or refund claim (see *Signature requirements* on page 7).
- Include the identifying number of the preparer on the income tax return or claim for refund. If an individual preparer is an employee of a preparer or is a partner in a partnership that is a preparer, the income tax return or claim for refund must also include the identifying number of the employer or partnership.
- Furnish a completed copy of the income tax return or claim for refund to the taxpayer not later than the time that the return or claim for refund is presented for the taxpayer's signature.
- Keep a completed copy of the income tax return or claim for refund for each taxpayer, or keep a list of the name and identification number of each taxpayer for whom a return or claim for refund was prepared. The completed copy of the return or claim for refund, or the list, must be available for inspection by the Tax Department upon request. The completed copy of the return or the list must be kept for a period of three years after the due date of the return (without regard to extensions) or three years after the date the return was presented to the taxpayer for signature, whichever is later. The completed copy of the claim for refund or the list must be kept for a period of three years from the time the claim for refund was presented to the taxpayer for signature.

Electronic filing (e-file)

E-file uses computer software or an internet application to file income tax returns electronically.

To participate in the New York State *e-file* program, a preparer must

- be an electronic return originator (ERO) authorized to *e-file* returns with the Internal Revenue Service (IRS), and
- use tax preparation software that has been tested by the New York State Tax Department.

A preparer who is not currently an authorized electronic return originator (ERO), should visit the IRS Web site (www.irs.gov) and apply online through the IRS *e-services* for tax professionals.

For detailed information on New York State's *e-file* program, visit the Tax Department's *e-file* Web page (www.nystax.gov/elf).

**Electronic filing
(*e-file*) mandate for
tax return preparers**
Tax Law section 658(g)(10)

The Tax Law **requires** many preparers to *e-file* their clients' tax returns. The law applies to returns required to be filed under Article 22 of the Tax Law (the personal income tax law) that the Commissioner of Taxation and Finance has authorized to be filed electronically.

For calendar years beginning on or after January 1, 2007, a preparer must *e-file* if the preparer

- prepared more than **100** New York State original tax returns during any calendar year beginning on or after January 1, 2006, and
- uses tax preparation software to prepare one or more New York State authorized tax returns in any succeeding calendar year.

A preparer who completes Form IT-370, *Application for Automatic Six-Month Extension of time to File for Individuals*, must *e-file* that form with the Tax Department if the preparer is required to *e-file* the taxpayer's New York State personal income tax return for that year. If a preparer is using software that does not support the *e-filing* of the extension, the preparer must file the extension directly on the New York State Tax Department Web site (www.nystax.gov).

Once a preparer is subject to the *e-file* mandate, the preparer must continue to *e-file* all of his/her clients' authorized personal income tax returns in all future years regardless of the number of returns filed.

An *original tax return* is a tax return required under Article 22 of the Tax Law that is filed during the calendar year for which that return is required to be filed.

An *authorized tax return* is any return required by Article 22 of the Tax Law that the Tax Department has authorized to be filed electronically. For

calendar year 2008, the Tax Department has authorized the *e*-filing of **individual** personal income tax returns and extensions only.

For additional information on the *e*-file mandate, visit the Tax Department's Web site (www.nystax.gov) .

Filing due dates

Calendar year personal income tax returns for tax year 2007 may be filed after January 1, 2008, but no later than April 15, 2008.

Fiscal year income tax returns must file by the 15th day of the fourth month following the end of the taxpayer's fiscal year.

Automatic six-month extension of time to file

File Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*, or Form IT-370-PF, *Application for Automatic Six-Month Extension of Time to File for Partnerships and Fiduciaries*, on or before the due date of the taxpayer's return, along with full payment of any tax due (if applicable), to get an automatic extension of time to file a New York State personal income tax return.

Form IT-370 or Form IT-370-PF will automatically extend the due date of the taxpayer's return for six months. For a calendar year taxpayer, if Form IT-370 or Form IT-370-PF is filed on or before April 15, 2008, the due date of the return will be extended to October 15, 2008.

Form IT-370 and Form IT-370-PF may be filed online using the Tax Department Web site (www.nystax.gov), electronically (*e*-file), or by US mail.

Individual taxpayers who do not *e*-file and expect to receive a refund or anticipate having no amount of New York State, New York City, or Yonkers income tax due, or no sales or use tax remaining unpaid as of the due date of the return, can file a copy of federal Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*, instead of Form IT-370. A copy of the federal extension must be attached when the taxpayer's New York State return is filed.

Note: If a preparer is required to *e*-file a taxpayer's personal income tax return, the preparer is required to *e*-file the taxpayer's Form IT-370, if applicable. See *Electronic filing (e-file) mandate for tax return preparers*, on page 6.

Signature requirements

Paper returns

A preparer may manually sign original returns, amended tax returns, and claims for refund. As an alternative, the preparer may sign by means of a rubber stamp, mechanical device, or computer software program. These

alternative methods of signing must include either a facsimile of the individual preparer's signature or the individual preparer's printed name. A preparer using one of these alternatives is personally responsible for affixing the signature to the returns or claims for refund.

A preparer who uses alternative methods of signing must provide all of the other preparer information that is required on the tax returns and claims for refund, such as the name, address, and relevant employer identification number. In addition, a preparer must provide the same identification number used for federal personal income tax purposes (social security number or preparer tax identification number (PTIN)). If a federal income tax return is not required, a preparer must use the preparer's PTIN unless the preparer does not have one; otherwise, the preparer must use the preparer's social security number.

For more information, see TSB-M-05(1)C,(1)I,(1)S,(1)M, *Alternative Methods of Signing for Tax Return Preparers*.

**Electronically filed
(e-file) returns**

In the case of *e*-filed returns and claims for refund, a preparer must enter a tax practitioner personal identification number (PIN) to electronically sign state returns and claims for refund. Preparers can use the same PIN for federal and New York State returns. In addition, Form TR-579, *New York State e-file Signature Authorization for Tax Year 2007*, must be signed by the taxpayer(s) and the preparer. Form TR-579 must be retained by the preparer for three years.

E-file extensions

If there is no tax due on an *e*-filed extension, there is no signature requirement for the taxpayer or the preparer.

If there is tax due with an *e*-filed extension, and the extension is *e*-filed using tax preparation software, the taxpayer(s) **must** pay the balance due by authorizing an electronic funds withdrawal using Form TR-579.1, *New York State Taxpayer Authorization for Electronic Funds Withdrawal for Tax Year 2007 Form IT-370*. Form TR-579.1 will establish that the taxpayer(s) has authorized the electronic return originator (ERO) to include the information necessary for the Tax Department to initiate the withdrawal. The ERO is not required to sign Form TR-579 for an extension; however, the ERO must retain a copy for three years.

If there is tax due with an *e*-filed extension, the preparer may file the extension directly on the Tax Department Web site (www.nystax.gov) to allow the taxpayer the following payment options:

- Check or Money Order
- Credit Card
- Electronic Funds Withdrawal

Online Tax Center

The *Online Tax Center* offers tax professionals secure and convenient access to a variety of tax services. Access is available 24 hours a day, 7 days a week (excluding scheduled maintenance). Once registered as a tax professional you can access available services on behalf of your clients as authorized. To register as a tax professional, you must have a valid Electronic Filer Identification Number (EFIN) issued by the Internal Revenue Service (IRS).

For more information, visit the Tax Department Web site (www.nystax.gov) and access the *Online Tax Center*.

Privacy and confidentiality

The Tax Law contains strict secrecy provisions to protect the confidentiality of tax returns and tax return information. Consequently, a taxpayer must give specific written authorization to a practitioner, paid preparer or other representative before he or she will be given access to a taxpayer's confidential records or be allowed to represent a taxpayer before the Tax Department or the Division of Tax Appeals. There are various levels of authorization a taxpayer can give.

Third-party designee

If a taxpayer wants to authorize a preparer to discuss their 2007 tax return with the New York State Tax Department, the taxpayer must check the *Yes* box in the *Third-party designee* area of his or her return and enter the information requested.

If the taxpayer marks the *Yes* box, the taxpayer(s) is authorizing the Tax Department to discuss with the third-party designee any questions that arise during the processing of his or her return. The taxpayer is also authorizing the designee to

- give the Tax Department any information that is missing from the return;
- call the Tax Department for information about the processing of the return or the status of the refund or payment(s); and
- respond to certain Tax Department notices that the taxpayer(s) shares with the designee about math errors, offsets, and return preparation. The Tax Department will **not** send notices to the designee.

Taxpayers are not authorizing the designee to receive any refund check, bind the taxpayer to anything (including additional tax liability), or otherwise represent the taxpayer before the Tax Department. If a taxpayer(s) wants the designee to perform those services, the taxpayer should file Form POA-1, *Power of Attorney* (see page 10).

The third-party designee authorization for 2007 tax returns will end automatically on the due date (without regard to extensions) for filing 2008 tax returns (for most taxpayers this will be April 15, 2009).

Power of attorney

A power of attorney is evidence that a practitioner or other person may act on behalf of a taxpayer. The power of attorney must contain explicit authorization for the practitioner to act for the taxpayer, and must be properly completed and signed.

The Tax Department prefers that preparers use Form POA-1, *Power of Attorney*, but will accept other forms if they contain all the necessary elements. Form POA-1 may be used for New York State tax matters, New York City tax matters, or both.

**Form DTF-505,
Authorization for
Release of Photocopies
of Tax Returns and/or
Tax Information**

Taxpayers can use Form DTF-505 to authorize the Tax Department to release specific items of tax information to a preparer without a power of attorney. Such authorization includes the following:

- the taxpayer's name, identification number, and address
- the specific reference to the year and tax type of the return, report, application, etc., to be released (a fee of twenty-five cents per page may apply)
- the name and address of the individual to whom the information is to be released
- the taxpayer's properly authorized signature

Penalties

**Failure to conform to
certain requirements**

Tax Law section 685(u)

A penalty of \$50 per return or claim for refund (maximum penalty of \$25,000) may be assessed against a preparer for failure to (1) sign an income tax return or claim for refund, (2) include the identifying number of the preparer on the income tax return or claim for refund, (3) furnish a completed copy of the income tax return or claim for refund to the taxpayer, and (4) keep a copy or list of the income tax return or claim for refund. (See *Requirements for tax return preparers* on page 5.)

**Failure to file
electronically**

Tax Law section 685(u)(5)

A penalty of \$50 for each return that is not *e*-filed may be assessed against a preparer subject to the *e*-file mandate, unless the failure to *e*-file is due to reasonable cause. Reasonable cause includes, but is not limited to, your client's election not to *e*-file his or her return. (See Form IT-800, *Opt-Out Record for Tax Practitioners*.)

**Aiding or assisting in
the giving of
fraudulent returns,
reports, statements,
or other documents**

Tax Law section 685(r)

A penalty of \$5,000 may be assessed against a preparer for aiding or assisting in the giving of fraudulent returns, reports, statements or other documents.

Understatement of liability

Tax Law section 685(aa)

A penalty of up to \$1,000 will be imposed upon a preparer if

- (1) any part of any understatement of liability with respect to any return or claim for refund is due to a position for which there is not or was not a reasonable belief that the tax treatment in that position was more likely than not the proper treatment;
- (2) the preparer with respect to the return or claim knew or reasonably should have known of that position; and
- (3) the position taken was not disclosed as provided in Tax Law section 685(p), or there was no reasonable basis for the tax treatment of that position.

The penalty of up to \$1,000 will not be imposed if it is shown that there is reasonable cause for the understatement and the preparer acted in good faith.

A penalty of up to \$5,000 will be imposed upon the preparer if any understatement of liability with respect to any return or claim for refund is due to a willful attempt to understate the liability for tax or any reckless or intentional disregard of rules or regulations by the preparer.

An *understatement of liability* means any understatement of the net amount payable with respect to any tax imposed under Article 22, or any overstatement of the net amount of credit or refund with respect to any such tax. The preparer penalty imposed under Tax Law section 685(aa) will not apply if the penalty under Tax Law section 685(r) is imposed on the preparer with respect to such understatement.

Certain transactions and related information regarding tax shelters

The Tax law provides for reporting requirements with respect to the disclosure of information relating to transactions that present the potential for tax avoidance (a tax shelter). The Tax Law also imposes stiffer penalties for nondisclosure and the underpayment of taxes due to participation in these transactions.

For information relating to the disclosure of certain transactions and related information regarding tax shelters, see:

- TSB-M-05(2)C,(4)I, *Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*
- TSB-M-05(2.1)C,(4.1)I, *Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*
- TSB-M-05(2.2)C,(4.2)I, *Additional Supplement to the Disclosure of Certain Transactions and Related Information Regarding Tax Shelters*

- TSB-M-07(4)C,(4)I, *Amendments to the Procedural Regulations Relating to New York Reportable Transactions*
- TSB-M-07(5)C,(5)I, *Notification of New York Listed Transaction - Certain Charitable Contribution Deductions*
- TSB-M-07(6)I, *Extension of Tax Shelter Provisions.*

New York State tax publications

New York State publications can be accessed on the Tax Department Web site (www.nystax.gov). In addition, the Tax Department provides an automated forms ordering system. If you have access to a fax machine, you may order many of these publications from a touch-tone telephone, 24 hours a day, 7 days a week by calling toll free 1 800 748-3676. You may also request most of these documents listed below by calling toll free 1 800 462-8100. From areas outside the U.S. and outside Canada, call (518) 485-6800.

The following is a list of some of the income tax publications available:

- Publication 3, *A Guidebook of Resources for Tax Practitioners*
- Publication 10-W, *FAQs: New York State College Tuition Credit and Itemized Deduction – For tax year 2007*
- Publication 16, *New York Tax Status of Limited Liability Companies and Limited Liability Partnerships*
- Publication 20, *New York State Tax Guide for New Businesses*
- Publication 22, *FAQs: New York State’s Real Property Tax Credit for Homeowners and Renters - For tax year 2007*
- Publication 35, *New York Tax Treatment of S Corporations and Their shareholders*
- Publication 46, *Common Reasons for Income Tax Adjustments*
- Publication 55, *Designated Private Delivery Services*
- Publication 75, *Specifications for Reproduction of Scannable and Nonscannable New York State Income Tax Forms*
- Publication 80, *General Income Tax Information for New York State Residents*
- Publication 84, *New York State Handbook for E-filers of 2007 Personal Income Tax Returns*

- Publication 88, *General Tax Information for New York State Nonresidents and Part-Year Residents*
- Publication 94, *New York State Tax Information – Should You Be Paying Estimated Tax in 2008?*
- Publication 99-B, *General Information on New York State and New York City Income Tax Credits for Businesses – For tax year 2007*
- Publication 99-IND, *General Income Tax Information on New York State and New York City Income Tax Credits for Individuals – For tax year 2007*
- Publication 310-NY, *Information on New York’s Earned Income Credit for tax year 2007*
- Publication 361, *New York State Income Tax Information for Military Personnel and Veterans*
- Publication 774, *Purchaser’s Obligations to Pay Sales and Use Taxes Directly to the Tax Department: Questions and Answers*

For a complete list of New York State Tax Department publications, visit the Tax Department Web site (www.nystax.gov).

New York State Department of Taxation and Finance

Online Tax Center

The place for **all** electronic services!




The *Online Tax Center* offers individuals, businesses, and tax professionals secure and convenient access to a variety of tax services. Access is available 24 hours a day, 7 days a week.* Use it at your convenience! For more information, visit us on the Web at www.nystax.gov and click on the *Online Tax Center* link.

* excluding scheduled maintenance

After you register, you can:

- pay any amount due on an income tax extension of time to file
- view and reconcile your estimated income tax account or make a payment
- view and pay tax bills (individuals and businesses)
- file a sales tax no-tax-due return

Without registering you can:

- visit our *Taxpayer Answer Center* for answers to frequently asked questions (FAQs)
- determine which income tax form to file
- apply for an automatic six-month extension of time to file your income tax return
-  get information on e-file and learn how to e-file your income tax return
- find out if you are eligible for **free** e-filing with **FreeFile**
- learn about your electronic payment options, including credit card and electronic funds withdrawal
- check the status of your current-year income tax refund
- use the penalty and interest calculator
- sign up for free e-mail notifications through our subscription service
- look up sales tax jurisdiction and rate information
- and more!



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Need help?



Internet access: www.nystax.gov

Access our Answer Center for answers to frequently asked questions; check your refund status; check your estimated tax account; download forms, publications; get tax updates and other information.



Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week.

1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

Refund status: 1 800 443-3200
(Automated service for refund status is available 24 hours a day, 7 days a week.)

To order forms and publications: 1 800 462-8100

Tax practitioner hotline: 1 888 238-0955

Personal Income Tax Information Center: 1 800 225-5829

From areas outside the U.S. and outside Canada: (518) 485-6800



Hotline for the hearing and speech impaired: If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 225-5829.