

INFORMATION FOR INCOME TAX RETURN PREPARERS

For tax year 2008



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 *Tax Professionals* page on the Tax Department 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.

Consumer bill of rights regarding tax preparers

General Business Law
Article 24-C

Chapter 432 of the laws of 2008 added Article 24-C to the General Business Law. The law is intended to increase consumer protection in the paid income tax preparer industry. As part of providing consumer protection, the law provides certain requirements for preparers to follow.

Effective January 1, 2009, tax preparers are subject to the following requirements unless specifically exempt by law:

- **Requirement to provide contact information.** Tax preparers are required to provide each of their customers with a receipt containing an address and phone number at which the preparer can be contacted throughout the year. If the actual person who prepared the return is an employee, partner, or shareholder of an entity that is a tax preparer, the general address and phone number of the entity should be on the receipt.
- **Requirement to distribute Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*.** The Tax Department is required to produce and make available to tax preparers an informational flier providing certain information for consumers about their rights regarding tax preparers. The flier is Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*, and is available on the Tax Department Web site (www.nystax.gov).

As of January 1 of each year, tax preparers are required to obtain the current version of Publication 135 from the Tax Department Web site and reproduce it for their customers. In addition, those tax preparers must give each customer a free copy of Publication 135 **before** any discussions with the customer. Preparers must direct each customer to review the publication and must answer any questions the customer may have regarding the content of the publication.

No later than October 15 of each year, the Tax Department must send a copy of Publication 135 to each tax preparer who has been found to be in

violation of the consumer bill of rights requirements regarding tax preparers as stated above.

Note: The Tax Department will not print and mail bulk orders of Publication 135 to tax preparers for distribution to their customers.

The following tax preparers are exempt from the above requirements to provide a receipt containing contact information and to distribute Publication 135:

- an employee or officer of a business enterprise who is preparing the tax returns of that business enterprise;
- a fiduciary, and the employees of the fiduciary, who advise or assist in the preparation of income tax returns on behalf of the fiduciary estate, the testator, trustee, grantor, or beneficiaries;
- an attorney who advises or assists in the preparation of tax returns in the practice of law, and his or her employees;
- a certified public accountant (CPA) licensed under the New York State education law or licensed by one or more of the states or jurisdictions of the United States, and his or her employees;
- a public accountant licensed under the New York State education law and his or her employees;
- an employee of a governmental unit, agency, or instrumentality who advises or assists in the preparation of income tax returns in the performance of his or her duties; and
- an agent enrolled to practice before the Internal Revenue Service (IRS).

For more information, see the *Tax Professionals* page on the Tax Department Web site (www.nystax.gov) and TSB-M-08(7)I, *Consumer Bill of Rights Regarding Tax Preparers*.

Refund anticipation loans (RALs)

All tax preparers are subject to the following requirements concerning refund anticipation loans (RALs).

Tax preparers are prohibited from advertising RALs as refunds (for example, advertising a RAL as an *instant refund*). Additionally, any advertisement by a tax preparer that mentions RALs must state conspicuously that a RAL is in fact a loan and that a fee or interest will be charged by the lending institution. The lending institution must be identified in the advertisement.

In addition, **before** a taxpayer enters into a RAL, the tax preparer facilitating the loan must provide a disclosure statement to the taxpayer, in a format specified by law. A tax preparer is obligated to complete the required disclosure accurately with all relevant information for each taxpayer. In addition, the completed disclosure form must be signed by the taxpayer before he or she enters into a RAL. For more information, see the *Tax Professionals* page on the Tax Department Web site (www.nystax.gov) and TSB-M-08(7)I, *Consumer Bill of Rights Regarding Tax Preparers*.

Tax preparers operating within New York City

Tax preparers operating within New York City are not subject to the provisions of Article 24-C of the General Business Law for tax returns actually prepared within the city. Instead, Subchapter 8 of Chapter 4 of Title 20 of the Administrative Code of the City of New York provides rules that apply specifically to tax preparers operating in New York City. For more information on New York City's consumer bill of rights regarding tax preparers, visit the New York City Department of Consumer Affairs Web site (www.nyc.gov/consumers) or dial 311 (212-NEW-YORK if you are outside New York City).

Requirements for tax return preparers

Tax Law section 658(g)

When preparing income tax returns and claims for refund, preparers must:

- E-file returns if certain criteria are met (see *Electronic filing (e-file) mandate for tax return preparers* on page 8).
- Sign the income tax return or refund claim (see *Signature requirements* on page 10).
- 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 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 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, including extensions. 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. (If a preparer is using software that does not support the e-filing of an extension, the preparer must file the extension directly on the New York State Tax Department Web site (www.nystax.gov)).

Beginning on January 1, 2009, a preparer must e-file all individual income tax returns and extensions, and all partnership returns (including Form IT-204-LL, *Limited Liability Company/Limited Liability Partnership Filing Fee Payment Form*) and extensions if the preparer was subject to the mandate in a prior year, or if the preparer:

- prepared more than **100** New York State *original tax returns* for tax year 2007 during calendar year 2008 (do not include extensions, amended returns, or returns filed for a prior year when determining the number of *original tax returns* prepared during calendar year 2008), and
- uses tax preparation software to prepare one or more New York State individual and/or partnership returns (including extensions) for tax year 2008 in calendar year 2009.

Preparers subject to the e-file mandate, must continue to e-file all of their clients' authorized tax returns in all future years regardless of the number of returns prepared. However, the mandate includes a provision that allows a

client to opt-out of e-file. The client must sign Form TR-800-IT, *Taxpayer Opt-Out and Reasonable Cause Record for Tax Return Preparers for Tax Year 2008*, or Form TR-800-PT, *Partnership Opt-Out and Reasonable Cause Record for Tax Return Preparers for Tax Year 2008*. If it is a joint personal income tax return, both spouses must sign. If it is a partnership return, an authorized member or general partner must sign. A separate Form TR-800-IT or TR-800-PT is required for **each** return or extension not being e-filed. Preparers must retain Form(s) TR-800-IT and Form(s) TR-800-PT in their records for three years.

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 2009, the Tax Department has authorized the e-filing of individual personal income tax returns and extensions, and partnership returns (including Form IT-204-LL) and extensions.

For additional information on the e-file mandate (including the new e-file mandate for certain business tax returns), visit the Tax Department's Web site (www.nystax.gov).

Filing due dates

Calendar year personal income tax returns for tax year 2008 may be filed after January 1, 2009, but no later than April 15, 2009.

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

To get an automatic extension of time to file a New York State income tax return, file Form IT-370, *Application for Automatic Six-Month Extension of Time to File for Individuals*, or Form IT-370-PF, *Application for Automatic 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).

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, 2009, the due date of the return will be extended to October 15, 2009.

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 U.S. mail.

Individual taxpayers who choose to file a paper return 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 tax return, the preparer is required to e-file the taxpayer's Form IT-370 or Form IT-370-PF, if applicable. See *Electronic filing (e-file) mandate for tax return preparers*, on page 8.

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

For e-filed returns, both the taxpayer(s) and the preparer must sign Form TR-579-IT, *New York State E-file Signature Authorization for Tax Year 2008 for Forms IT-150, IT-201, or IT-203*; and Form TR-579-PT, *New York State E-File Signature Authorization for Tax Year 2008 for Forms IT-204 and IT-204-LL*. Form TR-579-IT and Form TR-579-PT must be retained by the preparer for three years. In addition, the preparer must also sign the return(s) electronically by checking a box that indicates the preparer has read and agreed to the department's declaration certification language.

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-IT, *New York State Taxpayer Authorization for Electronic Funds Withdrawal for Tax Year 2008 Form IT-370*. Form TR-579.1-IT 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-579.1-IT for an extension; however, the ERO must retain a copy for three years. In addition, the ERO/preparer must also sign the return(s) electronically by checking a box that indicates that they have read and agreed to the department's declaration certification language.

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:

- electronic funds withdrawal
- credit card
- check or money order

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 (except for 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 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 2008 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*.

The authorization for a 2008 tax return(s) will end automatically one year after the later of the return due date (including any extension) or the date the 2008 return was filed.

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

Voluntary Disclosure and Compliance Program

The Voluntary Disclosure and Compliance Program allows eligible taxpayers to voluntarily disclose and pay certain underreported tax liabilities and interest. By executing a compliance agreement with the department, taxpayers will avoid tax penalties as well as civil, administrative, and criminal actions by the department. In addition, the taxpayer will not be subject to any criminal tax prosecution in New York State for the disclosed conduct.

An *eligible taxpayer* is an individual or entity subject to any tax imposed by, or pursuant to the authority of the Tax Law or any other law imposing administrative tax responsibilities on the department, and who meets all of the following criteria:

- The taxpayer is not currently under audit by the department.
- The taxpayer is voluntarily disclosing a New York tax liability that the department has not determined, calculated, researched or identified at the time of the disclosure.
- The taxpayer is not currently a party to any criminal investigation being conducted by an agency of the state or any political subdivision thereof.
- The taxpayer is not seeking to disclose participation in a tax avoidance transaction that is a federal or New York State reportable or listed transaction.

The term *taxpayer* includes any person required to pay or collect any of the taxes covered by the program. A taxpayer can be an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person subject to tax.

An eligible tax for the program is any tax currently or previously imposed under the Tax Law or administered by the department. To be eligible the tax must not have been previously assessed.

For additional information on this program or to apply online, visit the Tax Department Web site (www.nystax.gov).

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, or (4) keep a copy or list of the income tax return or claim for refund. (See *Requirements for tax return preparers* on page 7.)

Failure to file electronically

Tax Law section 685(u)(5)

A penalty of \$50 for each return or extension 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.

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(7)C, (6)I, *Extension of Tax Shelter Provisions*
- TSB-M-08(9)C,(4)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 the documents listed below by calling (518) 457-5431 (in-state callers without free long distance call 1 800 462-8100).

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 2008*
- 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 2008*
- 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 2008 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 2009?*
- Publication 99-B, *General Information on New York State and New York City Income Tax Credits for Businesses – For tax year 2008*
- Publication 99-IND, *General Information on New York State and New York City Income Tax Credits for Individuals – For tax year 2008*
- Publication 135, *Consumer Bill of Rights Regarding Tax Preparers*
- Publication 310-NY, *Information on New York's Earned Income Credits for tax year 2008*
- 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).



The New York State Department of Taxation and Finance

The place for all electronic services

Visit our Online Tax Center (OTC), your gateway to all electronic services.

Use the OTC to make payments, file certain returns, view account information, and more. Access is available 24 hours a day, 7 days a week (except for scheduled maintenance).

Look for the OTC logo on our Web site home page

www.nystax.gov

Notes

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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: (518) 457-5149
In-state callers without free long distance: 1 800 443-3200
(Automated service for refund status is available 24 hours a day, 7 days a week.)

Personal Income Tax Information Center: (518) 457-5181

In-state callers without free long distance: 1 800 225-5829

To order forms and publications: (518) 457-5431

In-state callers without free long distance: 1 800 462-8100



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at 1 800 634-2110. If you do not own a TTY, 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, call the information center.