

NYC Law and Rules that Apply Specifically to Income Tax Preparation

Note: New York City businesses must comply with all relevant federal, state, and City laws and rules. All laws and rules of the City of New York, including the Consumer Protection Law and Rules, are available through the Public Access Portal, which businesses can access by visiting www.nyc.gov/consumers. For convenience, sections of relevant New York State Law and/or New York City Law and Rules are included in this handout. The New York City Law and Rules are current as of January 2009.

Please note that businesses are responsible for knowing and complying with the most current laws, including any City Council amendments. The Department of Consumer Affairs (DCA) is not responsible for errors or omissions in the handout provided in this packet. The information is not legal advice. You can only obtain legal advice from a lawyer.

NEW YORK CITY ADMINISTRATIVE CODE TITLE 20: CONSUMER AFFAIRS SUBCHAPTER 8: INCOME TAX PREPARERS

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§ 20–739 **Definition.** 1. For the purposes of this subchapter, the term "tax preparer" or "preparer" means a person, partnership, corporation or other business entity, that for valuable consideration advises or assists or offers to advise or assist in the preparation of income tax returns for another.

2. For the purposes of this subchapter, the term "refund anticipation loan" means any loan a taxpayer may receive against his or her anticipated income tax refund.

§ 20–740 **Disclosure.** a. A tax preparer who is required, pursuant to federal, state or local law or regulation, to sign income tax returns as a preparer shall prominently and conspicuously post on the business premises an identification and qualification statement. The statement shall include, but is not limited to, the name of the tax preparer, an address and phone number at which the tax preparer can be contacted throughout the year, and a statement of any qualifications possessed by the tax preparer, which may include a statement of satisfactory completion of an educational or training program in income tax law, theory or practice by the preparer.

b. The tax preparer shall provide the customer with a receipt containing an address and phone number at which the preparer can be contacted throughout the year.

§ 20–740.1 **Consumer bill of rights regarding tax preparers.**

a. No later than the fifteenth of October of each year, the department shall produce and publish in the city record a one page informational flier regarding consumers' rights and laws concerning tax preparers to be called a "consumer bill of rights regarding tax preparers". The flier shall be in a form which is easily reproducible by photocopy machine and shall contain information including, but not limited to, the following:

1. Postings required by local, state and federal laws, such as price posting, posting of qualifications, and any licenses and permits required for the operation of the business; and

2. Explanations of some of the commonly offered services and industry jargon, such as preparation of short and long federal forms, refund, electronic filing, express mail, direct deposit, refund anticipation loan, "quick," "instant," "rapid," "fast," fee, and interest; and

3. Basic information on what a tax preparer is and is not required to do for a consumer, such as the preparer's responsibility to sign a return, that a tax

preparer may not be required to accompany a consumer to an audit but the company may have a voluntary policy to accompany consumers to audits; and

4. The telephone numbers of the department for information and complaints; and

5. A statement that the consumer has the right to receive the following information from the tax preparer prior to becoming obligated to compensate such tax preparer for services rendered in connection with filing such consumer's income tax return with the appropriate governmental agencies:

(a) A written list of the refund and tax preparation services offered by the tax preparer;

(b) A written estimate of the total costs to the consumer for each refund and tax preparation service offered by the tax preparer. Such an estimate shall include basic filing fees, interest rates, refund anticipation loan processing fees, and any other related fees or charges;

(c) A written interest rate estimation for a refund anticipation loan or any other loan services offered by the tax preparer; and

(d) For each refund and tax preparation service offered by the tax preparer, a written estimate of the period of time the consumer can reasonably expect to wait for his or her tax refund.

b. The department shall publicize the availability of the flier. The department shall provide a copy of the consumer bill of rights regarding tax preparers to any requesting individuals or businesses within fourteen days of such a request and shall, no later than November 1 of each year, send the consumer bill of rights regarding tax preparers to each tax preparer who has been found to be in violation of this subchapter or any other provision of this chapter within the previous calendar year. In addition, each tax preparer subject to this subchapter shall obtain a current consumer bill of rights regarding tax preparers from the department and shall reproduce it so that it is clear and legible. As of January 1 of each year, each such tax preparer shall give to each consumer, free of charge, a current, legible copy of the consumer bill of rights regarding tax preparers prior to any discussion with the consumer. Each such tax preparer shall also verbally direct the consumer to review the consumer bill of rights regarding tax preparers and shall answer any questions the consumer may have about its contents.

§ 20-741 **Records.** No tax preparer shall intentionally misstate or misrepresent any information relating to his or her education, training or experience on an identification and qualification statement. A tax preparer shall maintain records to substantiate all of the information contained on such a statement; provided, however, that an affidavit signed by the tax preparer

indicating that the information contained on a statement is true shall be sufficient to substantiate any information if other records are not available. Such records and/or affidavit shall be kept on file on the business premises and shall be presented on demand for inspection by the commissioner.

§ 20-741.1 **Refund anticipation loans.** 1. Any tax preparer who advertises the availability of a refund anticipation loan may not directly or indirectly represent such a loan as a refund. Any advertisement which mentions a refund anticipation loan must state conspicuously that it is a loan and that a fee or interest will be charged by the lending institution. The advertisement must also disclose the name of the lending institution.

2. Before any taxpayer enters into a refund anticipation loan, the tax preparer facilitating such loan shall provide the following disclosure to the taxpayer in writing, in English and Spanish, in at least 14-point type. In the event that the taxpayer does not understand English or Spanish, the tax preparer shall also provide a point-by-point oral explanation of the following required disclosure in a language understood by the tax payer:

- YOU ARE NOT REQUIRED TO ENTER INTO THIS REFUND ANTICIPATION LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS INFORMATION.
- IF YOU DO SIGN A CONTRACT FOR A REFUND ANTICIPATION LOAN, YOU WILL BE TAKING OUT A LOAN. YOU WILL BE RESPONSIBLE FOR REPAYMENT OF THE ENTIRE LOAN AMOUNT AND ALL RELATED COSTS AND FEES, REGARDLESS OF HOW MUCH MONEY YOU ACTUALLY RECEIVE IN YOUR TAX REFUND.
- IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU ARE ELIGIBLE TO RECEIVE A GROSS TAX REFUND OF APPROXIMATELY \$ [insert amount].
- IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU WILL BE RESPONSIBLE TO PAY \$ [insert amount] IN FEES FOR THE LOAN. AFTER THESE FEES ARE PAID, YOU WILL RECEIVE APPROXIMATELY \$ [insert amount] AS YOUR LOAN.
- THE ESTIMATED ANNUAL PERCENTAGE RATE OF YOUR REFUND ANTICIPATION LOAN IS [insert amount]%. THIS IS BASED ON THE ACTUAL AMOUNT OF TIME YOU WILL BE LENT MONEY THROUGH THIS REFUND ANTICIPATION LOAN.
- IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN EXPECT TO RECEIVE YOUR LOAN WITHIN APPROXIMATELY TWO BUSINESS DAYS OF [insert date].

- IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN STILL RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE MAIL, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF [insert date]. IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR TAX REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF [insert date].

It shall be the obligation of the tax preparer to complete the required disclosure accurately with all relevant information for each taxpayer, to provide the required point-by-point oral explanation when necessary, and to ensure that the completed disclosure form is signed by the taxpayer before he or she enters into a refund anticipation loan.

§ 20–742 **Exemptions.** Apart from § 20–741.1 and the accompanying penalties as listed in § 20–743, the provisions of this subchapter shall not apply to:

a. An officer or employee of a corporation or business enterprise who, in his or her capacity as such, advises or assists in the preparation of income tax returns relating to such corporation or business enterprise.

b. An attorney at law who advises or assists in the preparation of income tax returns in the practice of law and the employees thereof.

c. A fiduciary and the employees thereof who advised or assist in the preparation of income tax returns on behalf of the fiduciary estate, the testator, trustee, grantor or beneficiaries thereof.

d. A certified public accountant and the employees thereof.

e. A public accountant licensed pursuant to the education law and the employees thereof.

f. 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 official duties.

g. An agent enrolled to practice before the internal revenue service pursuant to section 10.4 of subpart A of part ten of title thirty-one of the code of federal regulations.

§ 20–743 **Penalties.** Any person, partnership, corporation or other business entity who violates any provision of this subchapter or any of the

regulations promulgated hereunder shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars for the first violation and for each succeeding violation a civil penalty of not less than five hundred dollars nor more than seven hundred fifty dollars.

§ 20–743.1 **Civil Cause of Action.** Any person claiming to be injured by the failure of a tax preparer to act in accordance with section 20–741.1 of this subchapter shall have a cause of action against such tax preparer in any court of competent jurisdiction for any or all of the following relief:

- a. compensatory and punitive damages;
 - b. injunctive and declaratory relief;
 - c. attorneys' fees and costs; and
 - d. such other relief as a court may deem appropriate.
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§ 5-66 **Tax Preparation.**

(a) *Definitions.*

Certified public accountant and public accountant. "Certified Public Accountant" and "Public Accountant" mean any individual who fits within the definitions set forth in Article 149 of the Education Law.

Income tax return or tax return. "Income tax return" or "tax return" means a federal, state or city tax return of a natural person, including joint returns and all related schedules.

Tax preparer. "Tax Preparer" means any individual or business that prepares any income tax return, for a fee, to obtain or retain clients, or in connection with the sale of items or services. It does not include an individual employed to prepare tax returns by another individual or business entity if that individual makes clear that he or she is only an employee and that his or her employer will sign the taxpayer's return.

(b) *Prohibited practices.* Tax preparers may not:

- (1) ask a taxpayer to sign a blank or incomplete tax return;
- (2) misrepresent their qualifications;
- (3) reveal any information appearing on a tax return or any information gathered for its preparation, including the fact of preparation and the content of solicitation lists, to any person or business other than:
 - (i) the taxpayer;
 - (ii) a person designated in writing by the taxpayer; or
 - (iii) anyone authorized to receive such information by court order or by law;

(4) make any deceptive statement designed to persuade taxpayers to use, or not to use, a tax preparer;

(5) induce or attempt to induce a taxpayer to violate any governmental law, rule or regulation;

(6) use the word "accountant" in any advertisement unless at least one Certified Public Accountant or Public Accountant is present at each tax preparing location during all business hours. The accountant(s) employed at that location must exercise control over all tax returns prepared at that location;

(7) use the term "expert," "master," "consultant," "specialist" or any similar terms in an advertisement unless the tax preparer's relevant education or experience is also disclosed in the advertisement. There must be a reasonable basis for any claims of expertise;

(8) alter a tax return after it has been signed by the taxpayer, without the taxpayer's written consent;

(9) charge a fee based upon the amount of tax owed or refund due.

(c) *Required practices.* (1) Tax preparers that advertise their tax preparation services in a manner designed to reach the general public must post the following information clearly and conspicuously in each office:

(i) exactly how their fees are computed. If there is a minimum fee for preparing a return, it must be disclosed. If the fee is variable, the factors upon which the variation depends must be disclosed;

(ii) that the taxpayer is entitled to receive a copy of every tax return prepared, at the time the original is given to the taxpayer for filing;

(iii) that both the tax preparer and the taxpayer must sign every tax return;

(iv) that the tax preparer is not licensed by the State Board for Public Accounting, or is not a member of the Bar of the State of New York, or both, if such is true;

(v) that the tax preparer or an agent will not represent the taxpayer at any audit, if such is true. ("Represent" means to appear before any government tax administering authority as attorney, Certified Public Accountant or enrolled agent. Failure to make this disclosure shall mean that the tax preparer agrees to represent the taxpayer or to provide representation.)

(2) Tax preparers must:

(i) sign every tax return prepared;

(ii) give a copy of every tax return prepared to the taxpayer, at the time the original tax return is given to the taxpayer for filing;

(iii) provide the taxpayer with a statement of the charges for each tax return or schedule prepared;

(iv) return any of the taxpayer's personal papers upon request, when the original tax return is given to the taxpayer for filing, unless specifically permitted to retain such papers under State law.

(d) *Refunds*. Tax preparers may not:

(1) guarantee a tax refund, or guarantee that the taxpayer will not be audited by any government tax agency;

(2) request a taxpayer to assign to the preparer any portion of the refund due;

(3) use their addresses on a tax return as the place to which a refund should be mailed, unless the taxpayer has signed a power of attorney containing such authorization. A fiduciary with authority to handle a taxpayer's financial matters is not required to obtain this power of attorney;

(4) claim to give taxpayers an "instant tax refund" that is actually an interest-bearing loan unless that fact is disclosed to the taxpayer in accordance with Federal and State law.

(e) *Records*. Each tax preparer shall retain a copy of every tax return prepared for a period of at least three years from the preparation date or the due date of the return, whichever is later.

(f) *Disclosure in foreign languages*. All disclosures required by this section must be made in English and in any other language which the tax preparer uses to attract customers.

(g) *Exemption*. Any individual or business which prepares income tax returns as an adjunct service to year-round fiduciary activities provided in the regular course of business for its customers is exempt from this section. If the business also offers individual tax return preparation services which are not related to such fiduciary activities, this section applies to those services.

Example: A bank trust department offers its services for a fee as trustee on personal trust accounts. The bank advertises that preparation of the beneficiaries' personal income tax returns is available to the beneficiaries of any trust for which it is trustee. This section does not apply to this tax preparation service. If, however, the bank has an agreement with a tax preparation service, under which the service would supply tax preparation services to the public at various branches of the bank, the bank is subject to this section. If the bank provides the service by its own employees, it is subject to this section.

§ 5-171 **Location**.

Each tax preparer shall prominently and conspicuously post the statement required by §20-740 of the Administrative Code at the public entrance to the

tax preparer's business premises or in the immediate area where consumers arrive and are met for business purposes by the tax preparer.

§ 5-172 Form and Content.

(a) Except as provided in subdivision (b) of this section, the sign shall be composed of proportionately spaced, upper-case black characters, "sans-serif," at least one-half inch (1/2") high on a white background. The lines on the sign shall be spaced at least one-half inch (1/2") apart.

(b) The heading "IDENTIFICATION AND QUALIFICATIONS OF TAX PREPARER" shall appear at the top and center of the sign. Subsequent lines shall begin at the left-hand margin of the sign. The first line beneath the heading shall state the full name of the tax preparer. The second and third lines shall state the address at which the tax preparer may be contacted throughout the year. The fourth line shall state the telephone number at which the tax preparer may generally be contacted throughout the year during business hours. The fifth line shall begin with the caption "**QUALIFICATIONS:**" and be followed by a statement of the tax preparer's relevant training and/or experience. Such statement may consist of characters one-quarter inch (1/4") high. (See Specimens No. I and II appearing below for sample signs.)

(c) A partnership, corporation or other business entity operating as a tax preparer may satisfy the disclosure requirements of §20-740 of the Administrative Code by posting one sign, containing its name, address and phone number as set forth above, and a statement of the minimum qualifications possessed by all individuals who prepare or assist in the preparation of tax returns as an agent or employee of the partnership, corporation or other business entity. (See Specimen No. II.)

(d) The sign shall not contain language which falsely indicates that a tax preparer is licensed or in any manner approved or authorized to do business by the City of New York.

Specimen No. I

IDENTIFICATION AND QUALIFICATIONS OF TAX PREPARER

JANE DOE

1 MAIN ST.

BRONX, NY 11111

212-555-5555

QUALIFICATIONS: DEGREE IN TAX PREPARATION FROM ABC COLLEGE AND FOUR YEARS EXPERIENCE IN PREPARING TAX RETURNS AT DEF TAX SERVICES.

Specimen No. II

IDENTIFICATION AND QUALIFICATIONS OF TAX PREPARER

XYZ TAX PREPARERS, INC.

1 MAIN ST.

NEW YORK, NY 10000

212-555-0000

QUALIFICATIONS: EACH INDIVIDUAL WHO PREPARES TAX RETURNS FOR XYZ TAX PREPARERS, INC. HAS AT LEAST SIXTY HOURS OF CLASSROOM TRAINING CONDUCTED BY XYZ TAX PREPARERS, INC.