

**New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division**

TSB-M-10(3)C
TSB-M-10(6)I
TSB-M-10(8)M
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TSB-M-10(3)R
TSB-M-10(9)S
All Taxes
August 3, 2010

**Enrolled Agents Excluded from the Definition of Tax Return Preparer
for the Tax Preparer Registration Program**

Chapter 242 of the Laws of 2010 amended the definition of *tax return preparer* in section 32 of the Tax Law. The definition is used to determine who needs to register for the Tax Preparer Registration Program. For a complete description of the program, see TSB-M-09(11)C, (9)I, 10(M), (3)MCTMT, (4)R, (15)S, *Tax Preparer Registration Program*, and TSB-M-09(14)C, (16)I, (13)M, (5)MCTMT, (11)R, (21)S, *Amendment to the Definition of Tax Return Preparer for the Tax Preparer Registration Program*.

The amendment applies in determining who must register as a tax return preparer for personal income tax returns on or after July 30, 2010, and for returns for taxes other than personal income taxes on or after December 31, 2010.

Description of change

Prior to the amendment, attorneys, public accountants, and certified public accountants were excluded from the definition of tax return preparer. Employees of a law firm, public accounting firm, or certified public accounting firm who prepare returns under the supervision of an attorney, public accountant, or certified public accountant in that firm were also excluded.

After the amendment, enrolled agents, and employees of an enrolled agent firm, law firm, public accounting firm, or certified public accounting firm who prepare returns under the supervision of an enrolled agent in that firm, are also excluded.

An *enrolled agent* is a tax professional who has demonstrated special competence in tax matters, applied for enrollment, and has been issued an enrollment card by the Internal Revenue Service under Title 31 Code of Federal Regulations, Subtitle A, Part 10, Subpart A, Section 10.4.

The amendment applies on or after July 30, 2010, and is not retroactive. Therefore, enrolled agents who registered under the Tax Preparer Registration Program and paid the registration fee prior to July 30, 2010, are not entitled to a refund.

Note: An enrolled agent who is excluded from the definition of a tax return preparer is still subject to the registration requirements if he or she facilitates the making of a refund anticipation check or refund anticipation loan. For additional information see TSB-M-09(11)C, (9)I, 10(M), (3)MCTMT, (4)R, (15)S, *Tax Preparer Registration Program*.

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Amended definition of tax return preparer

As amended, the definition of a tax return preparer is as follows:

Tax return preparer means an individual who prepares a substantial portion of any return for compensation. Tax return preparers include:

- employees of a tax return preparer or a commercial tax return preparation business who prepare returns for clients of that preparer or preparation business; and
- partners who prepare returns for clients of a partnership engaged in a commercial tax return preparation business.

The following individuals are not considered tax return preparers for purposes of the registration program:

- Attorneys, public accountants, enrolled agents, and certified public accountants.
- The employees of a law firm, public accounting firm, enrolled agent firm, or certified public accounting firm who prepare returns under the supervision of an attorney, public accountant, enrolled agent, or certified public accountant in that firm. For purposes of this exclusion, a firm can be composed of one or more attorneys, public accountants, enrolled agents, or certified public accountants. The term *supervision*, as used in this exclusion, means the direct onsite supervision of an employee, including the responsibilities of directing, assigning, and reviewing the employee's work.
- Volunteer tax preparers.
- Employees of a business or partners in a partnership whose job responsibilities include preparation of only that business's or that partnership's returns.
- Employees of a tax return preparer or a commercial tax return preparation business who provide only clerical or other comparable services.

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