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NYS Dept of Tax Clarifies E-file and Opt-out Penalties

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Submitted by Allison Schiff on Mon, 12/13/2010 - 17:10 [New York State](#) ^[1] [Taxes](#) ^[2]

Starting Jan. 1, 2011, practitioners in New York State will be charged a steep penalty every time they charge clients an e-file fee separate from the fee you already charge for services—\$500 for the first offense and \$1,000 for each subsequent occurrence, according to [section 34 of the Tax Law](#) ^[3]. But what does this mean for the average practitioner who, for example, includes a computer software fee on all invoices to help defray the costs of expensive tax preparation software?

No problem, says the state Department of Taxation and Finance—as long as the fee is charged to all clients, whether or not their return is e-filed.

But this doesn't mean the department plans to take a soft line with practitioners who disobey the law and charge a separate e-file fee.

"If the 'computer software fee' is charged only on returns that are e-filed [then] we would consider that a violation of section 34 of the Tax Law," said department spokesman Brad Maione.

Marc J. Strohl, who sits on the [Taxation of Individuals Committee](#) ^[4], has been concerned the department would see the computer software fee as a potential "e-file fee in sheep's clothing."

"But the department is not bent on approaching practitioners to single them out," said Strohl, who was in contact with the department on the issue. "The department is going to be understanding about the charge, which is legitimate as long as all of your clients are being charged."

According to Maione, the department is planning to be "aggressive in promoting e-filing to the maximum extent possible."

"With a state budget gap expected for the next fiscal year, we have to make every effort possible to reduce the costs of tax administration," said Maione. "E-filing improves service to taxpayers and will save the State millions of dollars."

In response to separate concerns about how the elimination of the e-file opt-out [5] will affect practitioners who cannot e-file in specific instances as the result of extenuating situations, Maione said not to worry.

“In evaluating any possible violation of the mandate, we’ll take into account the practitioner’s overall record of e-filing, specific forms or attachments that are not yet able to be e-filed, and other circumstances that may constitute reasonable cause not to e-file,” Maione explained.

Jonathan M. Horn, chair of the Taxation of Individuals Committee, however is dubious of this last statement.

“That is not the attitude or the position that the state department has taken to date and I suspect that they’re softening their tone because of the vocal concerns that have been raised by many people recently,” said Horn. “Essentially, I feel like the e-file mandate is on the individual and not really on the practitioner.”

“Yes,” he said. “There are probably some practitioners out there, not CPAs, who are either charging a large fee for e-file or refusing to e-file and filing paper returns despite the mandate.”

New York State Taxes

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