

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer Affairs is proposing to improve and expand consumer protections by amending its rules related to the content and placement of signage about the “consumer bill of rights”, including its distribution in other languages, and signage about the provision of written estimates.

When and where is the Hearing? The Department of Consumer Affairs (DCA) will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Friday, October 13, 2017. The hearing will be in the Department of Consumer Affairs hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

This location has the following accessibility option(s) available: Wheelchair accessibility.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department of Consumer Affairs through the New York City rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Casey Adams, Deputy Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, (646) 500-5962.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0095. You can also sign up in the hearing room before the hearing begins at 10:00 AM on Friday, October 13, 2017. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any written comments to the proposed rule on or before 5:00 PM on Friday, October 13, 2017.

Do you need assistance to participate in the Hearing? You must tell the Office of Legal Affairs if you need a reasonable accommodation of a disability at the Hearing other than the one(s) indicated above, if any. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0155. Please tell us by 5 PM on Wednesday, October 11.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written

comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.

What authorizes DCA to make this rule? Sections 1043 and 2203(f) of the City Charter and Sections 20-702, 20-740.1, and 20-743 of the Administrative Code authorize DCA to make these proposed rules. This proposed rule was not included in the regulatory agenda of the Department of Consumer Affairs for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find the DCA's rules? The Department of Consumer Affairs rules are in title 6 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department of Consumer Affairs must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Section 5-66(c) of Title 6 of the Rules of the City of New York (“6 RCNY”) requires tax preparers to post information regarding how they compute their fees. Section 20-740.1(b) of Title 20 of the Administrative Code of the City of New York (“Code”) requires tax preparers to provide consumers with a “consumer bill of rights regarding tax preparers” (“consumer bill of rights”) – a one page informational flier regarding consumers’ rights and laws concerning tax preparers. Code Section 20-750(a) and 6 RCNY Section 5-70(a) require retail service establishments, which includes tax preparers, to post a price list sign.

The Department has found through numerous complaints that consumers who seek tax preparer services often receive vague, confusing and/or inadequate information about the cost of such services, which has frequently resulted in consumers being overcharged. Additionally, although Code Section 20-740.1(b) requires tax preparers to provide each consumer with a consumer bill of rights prior to discussion with the consumer, the Department has found that tax preparers do not always comply and, absent a disclosure, consumers have no way of knowing about the bill of rights and their right to receive a copy. Therefore, the Department proposes to improve and expand consumer protections by:

- clarifying the information that tax preparers must include in the price list sign regarding how they compute their fees and the locations where the sign must be posted;
- requiring tax preparers to display signage informing consumers that they are entitled to receive a written estimate of fees before receiving services from the tax preparer;
- requiring tax preparers to post a sign stating that a tax preparer must provide every consumer with a free, current and legible copy of the consumer bill of rights; and
- requiring tax preparers to provide the consumer bill of rights in English and in the primary language spoken by the consumer, provided that the Department has made available a translation in such language.

Additionally, the Department is proposing to amend 6 RCNY Section 5-66(c) to incorporate the requirements of Code Section 20-750(a) and 6 RCNY Section 5-70(a), which mandate that the price list sign must be posted at each point at which orders are placed and/or payment is made. The Department would deem compliance by a tax preparer with this proposed amendment to satisfy Code Section 20-750(a) and 6 RCNY Section 5-70(a).

The Department also seeks to amend 6 RCNY Section 6-53 – the Income Tax Preparers Penalty Schedule – to include the fixed penalties for violations of the proposed new Section 5-173.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendment

Section 1. Subdivisions (c) and (f) of section 5-66 of Part 5 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

(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]; in English, prominently and conspicuously at the public entrance to the tax preparer's business premises or in the immediate area where consumers arrive and are met for business by the tax preparer:

(i) a price list sign stating 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;]The price list must contain:

(a) a list of services offered by the tax preparer;

(b) the minimum fee charged for each service, including but not limited to the fee charged for each type of Federal or New York State return;

(c) factors which may cause the fee to be higher than the minimum fee and, for each factor listed, the additional fee and/or the range of possible additional fees charged when the factor applies.

(ii) a disclosure sign or signs stating that:

(a) the taxpayer is entitled to receive a written estimate of all fees before receiving services from the tax preparer;

(b) 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)] (c) that both the tax preparer and the taxpayer must sign every tax return;

[(iv)] (d) 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)] (e) 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, if lawfully authorized, agrees to represent the taxpayer or to provide representation.)

(2) The price list sign required by subdivision (c)(1)(i) shall also be posted prominently and conspicuously at each point at which orders are placed and/or payment is made, including at each counter or desk. Compliance by a tax preparer with this requirement shall be deemed to satisfy the requirements of § 20-750(a) of the Administrative Code and § 5-70(a) of these Rules.

(f) *Disclosure in foreign languages.* [All] (1) In addition to English, all disclosures required by this section must be made [in English and] in any other language which the tax preparer uses to attract customers.

(2) For purposes of this section, failure to post each separately enumerated notice requirement constitutes a separate violation for which a penalty will be assessed.

§ 2. Subchapter H of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding a new section 5-173 to read as follows:

§ 5-173 Consumer Bill of Rights Regarding Tax Preparers.

(a) Each tax preparer must post a sign provided by the Department stating: “By law, tax preparers must give you a free, current, and legible copy of the Consumer Bill of Rights Regarding Tax Preparers before beginning any discussions about tax preparation services. The tax preparer must let you review that document and answer any questions you have. To file a complaint about this business, contact 311 or visit DCA’s website.”

(1) The sign must measure at least 17 inches wide by 11 inches tall.

(2) The sign must be:

(i) posted prominently and conspicuously at the public entrance to the tax preparer’s business premises or in the immediate area where consumers arrive and are met for business by the tax preparer; and

(ii) in English and in any other language which the tax preparer uses to attract customers, provided that the Department has made available a translation of such sign into that language.

(b) Prior to any discussion with the consumer, each tax preparer must give to each consumer a free, current, and legible copy of the consumer bill of rights regarding tax preparers in English and in the primary language spoken by the consumer, if the Department has made available a translation of such consumer bill of rights in such language.

§ 3. Section 6-53 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended to read as follows:

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

The penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

For the fine amounts marked by a single asterisk, if the respondent timely submits the appropriate proof of having cured a first-time violation, the respondent will not be subject to a civil penalty pursuant to Local Law 153 of 2013.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

| Citation | Violation Description | First Violation | First Default | Second Violation | Second Default | Third and Subsequent Violation | Third and Subsequent Default |
|--------------------------|--|-----------------|---------------|------------------|----------------|--------------------------------|------------------------------|
| Admin Code § 20-740(a) | Failure to post identification and qualification statement | \$375* | \$500* | \$675 | \$750 | \$750 | \$750 |
| Admin Code § 20-740(b) | Failure to provide customer with receipt | \$375 | \$500 | \$675 | \$750 | \$750 | \$750 |
| Admin Code § 20-740.1 | Improper consumer bill of rights | \$375 | \$500 | \$675 | \$750 | \$750 | \$750 |
| Admin Code § 20-741 | Improper records | \$375 | \$500 | \$675 | \$750 | \$750 | \$750 |
| Admin Code § 20-741.1 | Failure to comply with refund anticipation loan requirements | \$375 | \$500 | \$675 | \$750 | \$750 | \$750 |
| | | | | | | | |
| 6 RCNY § 5-66 | Improper tax preparation practices | \$260 | \$350 | \$315 | \$350 | \$350 | \$350 |
| 6 RCNY § 5-66(c) | Failure to post the required tax preparation signs | \$260* | \$350* | \$315 | \$350 | \$350 | \$350 |
| | | | | | | | |
| 6 RCNY § 5-171 | Failure to comply with sign location requirement | \$375 | \$500 | \$675 | \$750 | \$750 | \$750 |
| 6 RCNY § 5-172 | Improper sign form and content | \$375 | \$500 | \$675 | \$750 | \$750 | \$750 |
| <u>6 RCNY § 5-173(a)</u> | <u>Failure to comply with sign requirements</u> | <u>\$375</u> | <u>\$500</u> | <u>\$675</u> | <u>\$750</u> | <u>\$750</u> | <u>\$750</u> |
| <u>6 RCNY § 5-173(b)</u> | <u>Failure to comply with requirements regarding provision of bill of rights</u> | <u>\$375</u> | <u>\$500</u> | <u>\$675</u> | <u>\$750</u> | <u>\$750</u> | <u>\$750</u> |

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Information Required to be Provided by Tax Preparers

REFERENCE NUMBER: 2016 RG 083

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: December 28, 2016

NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS

**253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Information Required to be Provided by Tax Preparers

REFERENCE NUMBER: DCA-57

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Provides a cure period.

/s/ Francisco X. Navarro
Mayor's Office of Operations

December 30, 2016