

## New York City Department of Consumer Affairs

### **Notice of Proposed Hearing and Opportunity to Comment**

**What are we proposing?** The Department of Consumer Affairs (“DCA” or “Department”) is proposing rules to clarify the obligations of tax preparers under Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York. The Department is proposing amendments to the rules that will allow tax preparers who are not Certified Public Accountants (“CPAs”) or Public Accountants to use the word “accountant” to describe themselves, so long as they disclose that they are not CPAs or Public Accountants. In addition, where it is not feasible to post a price list sign at every place where payment is made because a tax preparer is preparing taxes at a consumer’s home or business, the rules will require tax preparers to provide each consumer with a hard copy of the price list prior to any discussion with the consumer.

**When and where is the Hearing?** DCA will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Thursday, May 9, 2019. The hearing will be in the DCA hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

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

- **Website.** You can submit comments to DCA through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [Rulecomments@dca.nyc.gov](mailto:Rulecomments@dca.nyc.gov).
- **Mail.** You can mail comments to Casey Adams, 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)-436-0392. You can also sign up in the hearing room before the hearing begins on at 10:00 AM on Thursday, May 9, 2019. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes. Written comments must be submitted on or before 5:00 PM on Thursday, May 9, 2019.

**What if I need assistance to participate in the Hearing?** You must tell DCA’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. 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. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Tuesday, May 7, 2019.

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

**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, all comments received by DCA on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

**What authorizes DCA to make this rule?** Sections 1043 and 2203(f) of the New York City Charter and Section 20-702 of the New York City Administrative Code authorize DCA to make this proposed rule. This proposed rule was not included in DCA's regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

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

**What laws govern the rulemaking process?** DCA 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(b)(6) of Title 6 of the Rules of the City of New York (“6 RCNY”) requires tax preparers who use the word “accountant” in any advertisement to have a Certified Public Accountant (“CPA”) or Public Accountant (“PA”) present on the business premises. Section 5-66(c) requires tax preparers who advertise their services to post information regarding how they compute their fees and to post certain disclosures.

DCA is proposing amendments to its rules to address complaints received from non-CPA or non-PA tax preparers, regarding the inability of such tax preparers to refer to themselves as accountants in advertisements. The proposed amendments also address complaints received from tax preparers regarding their inability to comply with price list sign requirements when conducting business at a consumer’s home or business. These proposed rules would amend Subchapter A of Chapter 5 of 6 RCNY to update the procedures that tax preparers who advertise their services must follow and update the requirements for posting of a price list. Specifically, these proposed rules:

- Allow tax preparers to call themselves accountants in any advertisement even if a CPA or PA is not present at their place of business as long as they immediately follow the word “accountant” with a conspicuous and prominent disclaimer that the tax preparer is not a CPA or PA.
- Requires a tax preparer who conducts business at a consumer’s home or business to provide such consumer with a hard copy of the tax preparer’s price list rather than post signs wherever payment is made.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-702 of the New York City Administrative Code authorize the Department of Consumer Affairs to make these proposed rules.

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 Amendments**

Section 1. Paragraph (6) of subdivision (b) of section 5-66 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

(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, or unless the tax preparer immediately follows the word “accountant” with a conspicuous and prominent disclaimer that the tax preparer is not licensed by the state as a Certified Public Accountant or Public Accountant. [The accountant(s)] If a tax preparer uses the word “accountant” without the disclaimer, then a Certified Public Accountant or Public Accountant employed at [that] the tax preparing location must exercise control over all tax returns prepared at that location.

§ 2. Paragraph (2) of subdivision (c) of section 5-66 of Subchapter A of Chapter 5 of Title 6 of the Rules of the City of New York is amended to read as follows:

(2) The price list sign required by subparagraph (i) of paragraph (1) of this subdivision 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, except where a tax preparer is doing business at a consumer's home or business, in which case the tax preparer must give each consumer a hard copy of the price list prior to any discussion with the consumer. Compliance by a tax preparer with this requirement shall be deemed to satisfy the requirements of § 20-750(a) of the Administrative Code and 6 RCNY § 5-70(a).

**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:** Amendment of Rules Governing Tax Preparers

**REFERENCE NUMBER:** 2019 RG 004

**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: March 27, 2019

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

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

**RULE TITLE: Amendment of Rules Governing Tax Preparers**

**REFERENCE NUMBER: DCA-91**

**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) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

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

March 27, 2018  
Date