

**CHAPTER 4**  
**TAX PREPARERS ACT REGULATION**

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NOTE: Rule-making authority cited for formulation of rules and regulations of the Tax Preparers Act, 11 GCA §40104.

The Tax Preparers Act regulations are reprinted here in form as exact as possible to those filed on November 4, 1976 with the Legislative Secretary. The substance of the regulations has not been changed. However, for the purpose of uniformity and ease of use, a new system of numbering has been adopted by the Editor. It is hoped that the revised numerical system will eventually be substituted for that formulated by the Director of Revenue and Taxation.

**§4101. Exemption as Provided in This Chapter.** (a) The purpose of this regulation is to implement 11 GCA §40103 of the Tax Preparers Act which provides as follow:

**"§40103. Exemptions.** The following persons are exempt from the requirements of this Chapter:

- (1) Any person regulated by the Board of Public Accountancy.
- (2) Any person who is a member of the Guam Bar Association.
- (3) Any trust company or trust business.
- (4) Any person who is authorized to practice before the Internal Revenue Service pursuant to Subpart A commencing with §10.1 of Part 10 of Title 31 of the Code of Federal Regulations."

(b) A person not otherwise exempted, shall not prepare or advise or assist in the preparation of any tax returns for another and for valuable consideration or represent that he is so engaged unless he is registered as a Tax Preparer under Tax Preparers Act, 11 GCA §40105 to §40117.

(c) A person may prepare or advise or assist in the preparation of tax returns only under the supervision of a registered Tax Preparer, or a person described in Subsections (a) to (d) of 11 GCA §40103 of the Tax Preparers Act, and subject to such conditions and limitations as the Director by rule may impose.

**§4102. Application for Examination.** (a) The purpose of this regulation is to prescribe rules pertaining to examination of persons desiring to register as Tax Preparers.

(b) Every person not exempted under 11 GCA §40103 of the Tax Preparers Act and desiring to be registered as a Tax Preparer shall take an examination prepared and administered by the Board of Tax Examiners, Department of Revenue and Taxation. To qualify for registration, each person must receive a passing grade of at least seventy percent (70%)

(c) Every person desiring to take the examination as required under this Title, shall call or otherwise contact the Board of Tax Examiners, Department of Revenue and Taxation, for an application form.

(d) Examination Schedules. Examination schedules shall be arranged by the Board of Tax Examiners as the need arises.

(e) Date and Time for Examination. The arrangement of the date and time for the taking of an examination shall be determined by the Board of Examiners as it deems appropriate. An application for examination form shall be completed by each candidate and submitted to the Board not later than ten (10) days before the scheduled examination. If the applicant is a corporation, firm, partnership, association or joint venture, the applicant shall designate or appoint the member or officer who is to submit an application on its behalf. The officer or member so designated or appointed shall complete two (2) application forms, one (1) for the corporation and one (1) for himself.

(f) **Fee.** Pursuant to Subsection (e) of 11 GCA §40105 of the Tax Preparers Act, a non-refundable Twenty Dollars (\$20.00) examination fee is hereby established. Each Application for Examination Form submitted to the Board shall be accompanied by the required fee.

(g) **Re-examination of an Unsuccessful Examinee, When.** Upon failure of an examinee to pass a given examination, the following rules shall apply:

(1) An examinee desiring to take a re-examination shall complete a new application for examination form and submit it to the Board, together with the applicable fee as established under the preceding Subsection (f), not later than ten (10) days before the scheduled examination date.

(2) In the case of an examinee who failed his first test, a second test may be scheduled to take place not earlier than thirty (30) days after the first test.

(3) In the case of an examinee who failed his second test, a third test may be scheduled to take place not earlier than thirty (30) days after the second test.

(4) In the case of an examinee who failed his third test, examination may be arranged to take place not earlier than every six (6) months interval.

**2008 COMPILER NOTE:** See 11 GCA § 40105 (e), repealed and reenacted by P.L. 29-002:V:1:19 (May 18, 2007) increasing the examination fee to \$100.

**§4103. Initial Application for Registration.** (a) The purpose of this Section [regulation] is to prescribe rules pertaining to application for registration by persons as Tax Preparers.

(b) The Board of Tax Examiners shall issue application for registration form to each person who completed an examination with a passing grade of at least seventy percent (70%). A registration form shall not be issued to any corporation, firm, partnership, association or joint venture, unless the member or officer designated or appointed to apply for examination on its behalf satisfactorily passes the examination.

(c) The form shall be completed so as to reflect all information called for in the form.

Incomplete form will be returned without action.

(d) Each application form shall be accompanied by fees and cash or surety bond as provided in 11 GCA §§40112 and 40117 of the Tax Preparers Act.

**§4104. Renewal of Registration: Restoration of Lapsed Registration.** (a) On or before June 30 of each year, every registered Tax Preparer shall apply to the Board and pay the fee for a renewal of his registration.

(b) Any registration that is not renewed on or before June 30 of any year shall lapse.

(c) The Board may restore any lapsed registration of two (2) years or less upon payment to it of late renewal fees; together with the required cash or surety bond as provided under §40113 of the Tax Preparers Act.

(d) Every person with lapsed registration of over two (2) years shall be considered a new applicant for purposes of the Tax Preparers Act; and shall be governed by rules and regulations as it pertains to new applicants.

(e) In determining the lapsed of time for purposes of the preceding Subsections (c) and (d) [Sections 3 and 4] of this Section [regulation], a year shall commence to accrue midnight, June 30 of any year; midnight, June 30 of a given year; midnight, June 30 of a given year to midnight, June 30 of the following year shall constitute one (1) year, and so on.

**§4105. Definition of *Employee, Representative, Partner, Agent, Officer or Member of a Registered Tax Preparers Office.*** (a) The purpose of this regulation is to define employee, representative, partner, agent, officer or member of a "registered tax preparer's" office with respect to 11 GCA §40102(a) of the Tax Preparers Act. The aforesaid Subsection (a) of §40102 reads as follows:

**"§40102. Definitions as Used in This**

**Chapter.** (a) *Tax Preparer* means a person, who for a fee assists with or prepares tax return for others, but does not mean an employee, representative, partner, agent, officer or member of a 'registered tax preparer's office.' "

(b) *Employee* means a person who renders service to a tax preparer, who can control the person rendering such services as to the manner and means of accomplishing tasks assigned such person, and for which services the Tax Preparer accepts responsibility for all debts, tortious acts and violations of §53647 of the Tax Preparers Act, the person incurs or commits within the scope of his employment.

(c) *Representative* means a person having the consent of a Tax Preparer, express or implied, to exercise discretion on behalf of a Tax Preparer, including affecting the legal rights and liabilities of the Tax Preparer, but who is subject to the right of control and direction of the Tax Preparer.

(d) *Partner* means a person, natural or created by law, who associates himself with one or more persons to carry on as co-owners a tax preparation business.

(f) *Agent* means one in a consensual judiciary relationship who is empowered to act with discretion on behalf of his principal, a Tax Preparer, who is capable of affecting the rights and liabilities of the Tax Preparer with third parties, but who is susceptible to the Tax Preparer's control.

(g) *Officer or Member* means one belonging to a tax preparation organization whose affiliation with the organization is subject to the right of discretion and control of the organization, and which organization accepts responsibility for the liabilities of its officers or members.

**§4106. Fees.** Pursuant to 11 GCA §40117 of the Tax Preparers Act, registration fees are established as follows:

(a) **Initial Registration.** The initial tax preparer registration fee shall be Fifty Dollars (\$50.00).

(b) **Registration of Additional Locations.** If a Tax Preparer maintains more than one (1) tax preparer location within Guam, he shall pay an additional fee of Fifty Dollars (\$50.00) for the principal location and an additional fee of Ten Dollars (\$10.00 for each additional location).

(c) Fees required to be paid by Tax Preparers who have employees, representatives, partners, agents, officers or members who are exempt from registration as a Tax Preparer. If a Tax Preparer has employees, representatives, partners, agents, officers or members who would be subject to registration but for the exemption provided in 11 GCA §40102(a) of the Tax Preparers Act, the Tax Preparer shall pay an additional fee as follows:

(1) Less than fifty (50) such persons, One Hundred Dollars (\$100.00).

(2) Fifty (50) or more but less than one hundred (100) persons, Five Hundred Dollars (\$500.00).

(3) One hundred (100) or more but less than five hundred (500) such persons, One Thousand Dollars (\$1,000.00).

(4) Five Hundred (500) or more of such persons, One Thousand Five Hundred Dollars (\$1,500.00).

(d) **Maximum Fees.** The fee provided for above shall be cumulative except that no Tax Preparer shall be required to pay more than One Thousand Five Hundred Dollars (\$1,500.00) as a registration fee.

(e) **Renewal Registration Before Expiration.** The annual renewal fees for a Tax Preparer shall be the total of the fees provided by Subsections (a), (b), (c) and (d) of this Section if the registration is renewed prior to its expiration.

(f) **Renewal Registration After Expiration.** The annual renewal fee for a Tax Preparer shall be the total of the fees provided by Subsection (a), (b), (c) and (d) of this Section, plus fifty percent (50%) of the total thereof. [6.1]

**§4107. Issuance of Certificate Together With an Identification Card to Qualified Tax Preparer.** (a) The Board of Tax Examiners

shall issue a certificate and an identification card as a Tax Preparer to each applicant who:

(1) Demonstrates to the satisfaction of the Board of Tax Examiners fitness as a Tax Preparer; and

(2) Pays to the Board of Tax Examiners the required fees as provided in 11 GCA §40117, and cash or surety bond as provided in §40113 of the Tax Preparers Act and the regulations thereunder.

(b) **Certificate to be Displayed.** Each Tax Preparer shall display the certificate in each tax preparer location as proof of a valid registration issued under the Tax Preparers Act.

(c) Number of certificate to be issued - more than one (1) tax preparer location. Where registration is for more than one (1) tax preparer location, the Board of Tax Examiners shall issue one (1) certificate to the principal location, plus one (1) certificate to each additional location.

**§4108. Procedure for Refund of Unused Cash Bond Upon Termination as Tax Preparer.** (a) Cash Bond in Lieu of Surety Bond Deposited Pursuant to 11 GCA §40113 of the Tax Preparers Act. The purpose of this Section [regulation] is to prescribe rules of procedure pertaining to a claim for refund of unused cash bond by a registered person upon termination of tax preparation business.

(b) **Notice of Termination as a Tax Preparer Upon or Prior to Expiration of Registration, Necessary.** Every person terminating its tax preparation business upon or prior to expiration of registration shall indicate its intention to the Board of Tax Examiners by a written notice, signed by the Tax Preparer or its authorized agent or representative, not later than thirty (30) days before termination date. The notice shall include but not limited to the following information:

- (1) Tax Preparer's intention to terminate;
- (2) Reason for termination;
- (3) Expected date of termination; and
- (4) Change of address upon termination where applicable.

(c) **Termination Form Issued, When.** A termination form, to be prescribe by the Board of Tax Examiners, shall be issued to the Tax Preparer by the Board of Tax Examiners upon receipt of the Tax Preparer's notice of intention to terminate tax preparation business.

(d) Signature on Termination Form, by Whom:

(1) **Individual Tax Preparer.** Where the Tax Preparer is an individual other than a firm, partnership, association, joint venture or corporation, the signature on the termination form shall be the signature of the owner of the tax preparation business.

(2) **Firm, Partnership, Association, Joint Venture or Corporation Tax Preparer.** Where the Tax Preparer is a firm, partnership, association, joint venture or corporation, the signature on the termination form shall be the signature of a designated or appointed member or officer authorized to execute the termination form on behalf of the Tax Preparer.

(e) **The Board of Tax Examiners to Initiate Necessary Steps to Cause Refund of Unused Cash Bond.** The Board of Tax Examiners, upon receipt of a completed termination form issued under the preceding §4103(c), shall initiate the necessary steps cause a refund

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to be made of unused cash bond to the Tax Preparer. Nothing in this provision shall be construed as excusing a terminated Tax Preparer of liabilities under this Title.