

10/20/2011

ELECTRONIC FILING & PAYMENT TAX PRACTITIONER LIABILITY

A “tax practitioner” or “tax preparer” is generally any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax or claim for refund under any New Jersey tax law

A tax practitioner who files returns and pays taxes on behalf of either an individual or business client does not become personally responsible for the payment of the client’s tax liabilities, by virtue of the tax practitioner’s use of any e-filing service offered by the State of New Jersey or any other system for the electronic filing of State tax returns and/or payment of tax.

However, tax preparers have the responsibility of determining if they will meet the e-filing mandate requirements as provided under N.J.S.A. 54A:8-6.1 and N.J.A.C. 18:35-6.4 (f). Once a tax preparer has met or exceeded the return threshold as required under the law, the preparer is required to file electronically in all subsequent years. A penalty of \$50 for each failure is imposed on any taxpayer or tax preparer who fails to use electronic methods to file a return or pay a tax as the law requires. The penalty is in addition to any other penalty.

Record keeping is still the obligation of the taxpayer, including the documents, worksheets or other records related to the electronic filing of tax returns or payments. The tax practitioner should provide such information to his or her client for record-keeping purposes.

Both Form NJ-8879 (New Jersey e-file Signature Authorization) and Form NJ-8453 (Individual Income tax Declaration for Electronic Filing) have been discontinued. Practitioners who completed these forms in the past are not required to retain them in their files, but they may opt to use and retain copies of Form NJ-8879 as a document to confirm that their client has reviewed their return and attests to its accuracy.

A person who has personal and individual liability for state tax liabilities is referred to as a responsible person. The term includes an officer or employee of a corporation, or member or employee of a partnership, or any other person who has a duty or responsibility to pay over withholding, room occupancy, sales and use, or luxury taxes. An independent professional tax practitioner having no authority over the taxpayer’s business or personal financial affairs or no control over the decision to disburse the taxpayer’s funds is not, generally, a responsible person.

Having the authority to file or pay the taxpayer’s taxes electronically does not, without more, transform a tax practitioner into a responsible person.