

**11 GCA FINANCE & TAXATION
CH. 40 REGISTRATION, BONDING AND
REGULATION OF TAX PREPARERS**

**CHAPTER 40
REGISTRATION, BONDING AND
REGULATION OF TAX PREPARERS**

- § 40101. Short Title.
- § 40102. Definitions.
- § 40103. Exemptions.
- § 40104. Enforcement & Administration.
- § 40105. Application for Examination; Registration.
- § 40106. Registration: Eligibility and Qualification.
- § 40107. Same: Effective Date and Penalty.
- § 40108. Same: Denial, Revocation, Suspension and Withdrawal.
- § 40109. Same: Notice of Denial.
- § 40110. Injunctions Restraining Violation.
- § 40111. Civil Action.
- § 40112. Severability.
- § 40113. Bonds Required.
- § 40114. Same: Penalty.
- § 40115. Advertising Prohibited.
- § 40116. Distribution of Revenue.
- § 40117. Amount of Annual Fees.

NOTE: GC § 53650, et seq., appeared in Title LVI,, 1970 Ed. in Chapter I, Hotel Corporation; these section numbers were again used when The Tax Preparer Act was enacted by P.L. 13-92, as is reflected in source notes for the following chapter. Title LVI, concerning Hotel Corporation, was repealed by P.L. 16-87.

§ 40101. Short Title.

This Chapter may be cited as the *Tax Preparer Act*.

SOURCE: GC § 53640, as added by P.L. 13-92.

§ 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) *Division* means the appropriate Division within the Department of Revenue and Taxation.

11 GCA FINANCE & TAXATION
CH. 40 REGISTRATION, BONDING AND
REGULATION OF TAX PREPARERS

(c) *Director* means the Director of the Department of Revenue and Taxation.

(d) *Fee* means any money or valuable consideration paid or promised to be paid for services rendered or to be rendered by any tax preparer.

(e) *Person* means an individual, firm, partnership, association, joint venture or corporation.

(f) *Tax return* means any return, declaration, statement, refund claim or other document required to be made or filed in connection with territorial or Federal taxes or bank or corporation franchise tax.

SOURCE: GC § 53641, as added by P.L. 13-92.

§ 40103. Exemptions.

The following persons are exempt from the requirements of this Chapter:

(a) Any person regulated by the Board of Public Accountancy;

(b) Any person who is a member of the Guam Bar Association;

(c) Any trust company or trust business;

(d) 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.

SOURCE: GC § 53642, as added by P.L. 13-92.

CROSS-REFERENCES: See 7 GCA §9214(c)(4) for the law exempting certain tax preparers from the prohibition against the illegal practice of law.

§ 40104. Enforcement & Administration.

The duty of enforcing and administering this Chapter is vested in the Director, who shall promulgate appropriate rules and regulations for the implementation of this Act. Every power granted or duty imposed upon the Director by this Chapter may be exercised or performed in the name of the Director by such subordinate officials of the Department of Revenue and Taxation as he may determine to be necessary for the efficient and effective administration and operation of the Tax Preparers Act.

(a) With the approval of the Director, they may adopt rules and regulations as he determines are reasonably necessary to carry out

11 GCA FINANCE & TAXATION
CH. 40 REGISTRATION, BONDING AND
REGULATION OF TAX PREPARERS

the purposes of this Chapter. Such rules and regulations shall be adopted pursuant to the Administrative Adjudication Law.

(b) The Director shall maintain a record of registered tax preparers. The record shall include the names and addresses of the tax preparer and locations used by all registered tax preparers; which list is a public record and open to public inspection at reasonable times.

(c) The Director shall, on his own initiative or in response to complaints, investigate and gather evidence of violations of this Chapter and of any rule or regulation adopted pursuant to this Chapter by any tax preparer, whether registered or not, and by any employee, partner, officer, agent or member of any tax preparation office.

SOURCE: GC § 53643, as added by P.L. 13-92.

§ 40105. Application for Examination; Registration.

(a) Every tax preparer shall take an examination of not less than fifty (50) questions which will be prepared by the Director of such division or organizational unit or board as he may designate. To qualify, each preparer must receive a passing grade of at least seventy percent (70%).

(b) Every tax preparer shall register upon forms prescribed by the Director of the division designated by him. The form shall contain sufficient information to identify the tax preparer, including name, address, identification numbers and other identifying data which is prescribed by the Director.

(c) Any tax preparer maintaining more than one business location shall be permitted to file a single form which, in addition to the information required in § 40104(b), clearly designates each location, identifying one location as the principal location and all others as additional locations, and the individual or individuals in charge of each location.

(d) If any of the information required by this Section changes, the tax preparer shall promptly notify the Director of the changes.

(e) Examination Fee. A non-refundable examination fee of One Hundred Dollars (\$100.00) *shall* be paid by each person applying to take

11 GCA FINANCE & TAXATION
CH. 40 REGISTRATION, BONDING AND
REGULATION OF TAX PREPARERS

the Income Tax Preparer examination. The Director may increase such fees commensurate with costs incidental to such exam.

(f) An unsuccessful examinee may be re-examined as follows:

(1) Second test thirty (30) days after first exam;

(2) Third test thirty (30) days after second exam;

(3) Thereafter the examinee may be re-examined every six (6) months.

SOURCE: GC § 53644, added by P.L. 13-92; Subsections (e) & (f) added by P.L. 13-208. Subsection (e) repealed and reenacted by P.L. 29-002:V:I:19 (May 18, 2007).

§ 40106. Registration: Eligibility and Qualification.

Upon receipt of the form properly filled out, and receipt of the required fee, and receipt of proof of deposit of the bond required by this Chapter, if the Director determines that the applicant is eligible, he shall validate the registration and send a proof of such valid registration to the tax preparer.

(a) Every registration shall cease to be valid on June 30 of each year, unless the tax preparer has paid the renewal fee required by this Chapter.

SOURCE: GC § 53645, as added by P.L. 13-92.

§ 40107. Same: Effective Date and Penalty.

On or after July 1, 1976, it shall be unlawful for any person to be a tax preparer unless such person is registered in accordance with the provisions of this Act. Any person who violates this Section is guilty of a petty misdemeanor for each violation of this Section.

SOURCE: GC § 53646, as added by P.L. 13-92, amended by P.L. 13-187:248:1.

§ 40108. Same: Denial, Revocation, Suspension and Withdrawal.

(a) The Director may refuse to validate or may suspend or revoke, temporarily or permanently, the registration of tax preparer for any of the following acts or omissions relating to preparing tax returns for others for a fee which are done by the tax preparer or any employee, representative, partner, agent, officer or member of the tax preparation office:

11 GCA FINANCE & TAXATION
CH. 40 REGISTRATION, BONDING AND
REGULATION OF TAX PREPARERS

(1) Making or authorizing the making of any oral or written statement or representation, which is intended to induce persons to use the tax preparation service of the tax preparer, which statement or representation is fraudulent, untrue or misleading.

(2) Obtaining the signature of a customer on a tax return or authorizing documents which contain blank spaces to be filled in after the signature has been obtained.

(3) Failing or refusing to give a customer, for his own records, a copy of any document requiring his signature, within a reasonable time after the customer signs such document.

(4) Failing to maintain a copy of any tax return prepared for a customer for the applicable statute of limitation period.

(5) Engaging in any fraudulent conduct.

(6) Violating the advertising prohibitions set forth in this Chapter.

(7) Failing to promptly report changes in the information required by § 40105(d).

(8) Violating the provisions of §7216 of the Guam Income Tax Laws.

(9) Failing to post the proof of valid registration supplied by the Director in each tax preparer location.

(10) Failing to sign a customer's tax return as prescribed by the Director.

(11) Failing to represent taxpayers in audit or other conferences required by the Director, provided that such conferences shall be only for the purpose of discussing the client's tax return as prepared by the tax preparer; further provided that nothing in this provision shall be construed as giving authority to the tax preparer to represent a client in any legal proceedings before a court of law.

(b) In addition to the grounds specified in Subsection (a), the Director may refuse to validate or may suspend or revoke, temporarily or permanently, the registration of a tax preparer if he has been convicted of a felony having as one of its necessary elements a fraudulent act or an act of dishonesty or a breach of trust and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, irrespective of

11 GCA FINANCE & TAXATION
CH. 40 REGISTRATION, BONDING AND
REGULATION OF TAX PREPARERS

an order granting probation following such conviction, or suspending the imposition of sentence or of a subsequent order under the provisions of the Criminal Procedure Code allowing such person to withdraw his plea of guilty or setting aside the plea or verdict of guilty, or dismissing the accusation of information.

SOURCE: GC § 53647, added by P.L. 13-92, amended by P.L. 13-187:248:2.

§ 40109. Same: Notice of Denial.

If the Director refuses to validate a registration, he shall notify the applicant by personal service or registered mail, return receipt requested, mailed to the address as shown on the registration form. In the event such notice is given, the applicant shall be given a hearing if he files a written request with the Director within sixty (60) days after the notice is given.

(a) All hearings relating to a refusal to validate a registration or revocation or suspension of a registration shall be conducted pursuant to Article 2 of 5 GCA Chapter 9.

(b) The expiration of a valid registration shall not deprive the Director of jurisdiction to proceed with any investigation or disciplinary proceeding against a tax preparer or to render a decision invalidating, revoking or suspending a registration.

SOURCE: GC § 53648, as added by P.L. 13-92.

§ 40110. Injunctions Restraining Violation.

A judge of the Superior Court, may upon a petition filed by the Director, issue an injunction or other appropriate order restraining conduct in violation of provisions of this Act or other regulations adopted pursuant to this Chapter. The proceedings under this Section shall be governed by the Code of Civil Procedure, Chapter III, Title VII, except that no undertaking shall be required and the Director shall not be required to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury.

SOURCE: GC § 53649, as added by P.L. 13-92.

§ 40111. Civil Action.

Nothing in the provisions of this Chapter shall prohibit the bringing of a civil action against a tax preparer by an individual.

SOURCE: GC § 53650, as added by P.L. 13-92.

§ 40112. Severability.

11 GCA FINANCE & TAXATION
CH. 40 REGISTRATION, BONDING AND
REGULATION OF TAX PREPARERS

If any provision of this Chapter or application thereof to any person or circumstance is held unconstitutional, the remainder of the Chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SOURCE: GC § 53651, as added by P.L. 13-92.

§ 40113. Bonds Required.

A tax preparer shall deposit with the Division, prior to registration or registration renewal, a cash or surety bond issued by an insurer licensed on Guam in the penal sum of One Thousand Dollars (\$1,000.00). The bonds required by this Section shall be payable to the General Fund on behalf of the people of Guam and shall contain the condition that the person applying for registration or registration renewal shall comply with this Chapter and shall pay all damages occasioned to any person by reason of misstatement, misrepresentation, fraud, deceit or any unlawful acts or omissions by the tax preparer or its agents or employees while acting in the scope of their employment or agency. The aggregate liability of the surety shall in no event exceed the penal sum of the bond.

SOURCE: GC § 53652, as added by P.L. 13-92.

§ 40114. Same: Penalty.

If any tax preparer fails to file a new bond with the division within thirty (30) days after notice of cancellation by the surety of the bond required under § 40113 the registration under this Chapter shall be suspended until such time as a new bond is filed. A person whose registration is suspended pursuant to this Section shall not, for a fee, assist with or prepare the income or franchise tax returns of others during the period of such suspension.

SOURCE: GC § 53653, as added by P.L. 13-92.

§ 40115. Advertising Prohibited.

No tax preparer or employee, representative, partner, officer, agent or member of a tax preparer firm shall make, or authorize the making of any reference to the registration required by this Chapter in any advertising medium. Advertising medium shall include but shall not be limited to newspapers, magazines, leaflets, phone directory listings, city directory listings, radio and television broadcasts, recorded telephone messages, transit ads, billboards and signs. The posting of a proof of

11 GCA FINANCE & TAXATION
CH. 40 REGISTRATION, BONDING AND
REGULATION OF TAX PREPARERS

valid registration, supplied by the Director in the tax preparer's office shall not constitute a violation of this Section.

SOURCE: GC § 53654, as added by P.L. 13-92.

§ 40116. Distribution of Revenue.

All fees and revenues collected pursuant to this Chapter shall be paid into the General Fund.

SOURCE: GC § 53655, as added by P.L. 13-92.

§ 40117. Amount of Annual Fees.

The fees prescribed by this Chapter shall be set by the Director in the amount estimated to provide for the administration of this Chapter within the limits of the following schedule:

(a) The tax preparer registration fee shall be established by the Director at a sum not less than One Hundred Dollars (\$100.00).

(b) If a tax preparer maintains more than one (1) tax preparer location, an additional fee shall be established by the Director at a sum not to exceed One Hundred Dollars (\$100.00) for the principal location and Fifty Dollars (\$50.00) for each additional location.

(c) If a tax preparer has employees, representatives, partners, agents, officers or members who would be subject to registration under this Chapter but for the exemptions provided in §40103, an additional fee shall be established by the Director at a sum not to exceed the following:

(1) Two Hundred Dollars (\$200.00) if the tax preparer has less than fifty (50) such persons.

(2) One Thousand Dollars (\$1,000.00) if the tax preparer has fifty (50) or more but less than one hundred (100) persons.

(3) Two Thousand Dollars (\$2,000.00) if the tax preparer has one hundred (100) or more but less than five hundred (500) such persons.

(4) Three Thousand Dollars (\$3,000.00) if the tax preparer has five hundred (500) or more such persons.

SOURCE: GC § 53656, as added by P.L. 13-92. Amended by P.L. 29-002:V:I:20 (May 18, 2007).
