

**Advisory Opinion No. 01-7:** The two year bar precludes a former Department of Taxation and Finance employee from preparing State tax returns to be submitted to the Department within two years of separation from the Department's service.

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## **INTRODUCTION**

The following advisory opinion is issued in response to a request by [ ] a former employee of the Department of Taxation and Finance ("Tax Department"). He asks whether, during the two year post-employment period, he may, for compensation, prepare individual, corporation or partnership State income tax returns for submission to his former agency.

Pursuant to its authority under Executive Law §94(15), the New York State Ethics Commission ("Commission") renders its opinion that [the former State employee] may not prepare State income tax returns within two years of leaving the Tax Department as he would be rendering compensated services on a matter before the Tax Department, in violation of Public Officers Law §73(8)(a)(i).

## **BACKGROUND**

Until recently, [the former State employee] was employed by the Tax Department as a [job title]. In this capacity, [the former State employee] would "supervise the squad, oversee and provide any assistance necessary to squad members during the audit process . . . prepare briefs and advocate protest cases . . . [and] review, approve and submit administrative records and forms and prepare reports according to Department or State policy and time frames . . . ." [The former State employee] retired from State service on [date].

[Prior to leaving State service], [the former State employee] requested an informal opinion to determine the application of the post-employment restrictions involving several potential employment opportunities. On [date], the Commission responded in part to the situations posed by [the former State employee] and indicated that the issue of his preparing State tax returns for compensation within the two year bar period would be addressed in a formal opinion at a later date.

## **APPLICABLE STATUTE**

The statutory language setting forth the two year bar is found in Public Officers Law §73(8)(a)(i), which provides as follows:

No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of

any person, firm, corporation, or association in relation to any case, proceeding or application or other matter before such agency.

These restrictions set the ground rules for what individuals may do with the knowledge, experience and contacts gained from public service after they terminate their employment with a State agency. The two year bar prohibits former State officers and employees from appearing, practicing or rendering services for compensation in relation to any case, proceeding, application or other matter before their former agency for two years following their separation from State service.

## **DISCUSSION**

In Advisory Opinion No. 90-18, the Commission considered a request from a former Tax Department employee concerning the application of Public Officers Law §73(8) to a number of post-employment activities. The Commission concluded, in pertinent part, the following:

Section 73(8) does not preclude an individual from preparing tax returns for, or participating in tax compliance audits conducted by, the federal government. The post-employment restrictions apply only to activities engaged in before State agencies. For a period of two years after termination from State service, a former employee is barred from participating in any tax audit, whether sales tax or any other tax, conducted by the Department, and from the preparation of State tax returns for compensation. The two-year ban precludes any appearing, practicing or receiving of compensation for services rendered on any matter before the Department and any of its divisions.

The conclusion in Advisory Opinion No. 90-18 directly responds to the question raised by [the former State employee]. The Commission sees nothing in the current request that would lead it to render a conclusion contrary to this precedent.

## **CONCLUSION**

The Commission concludes that [the former State employee] may not prepare State income tax returns within two years of leaving the Tax Department as he would be rendering compensated services on a matter before the Tax Department, in violation of Public Officers Law §73(8)(a)(i).

This opinion, unless and until amended or revoked, is binding on the Commission in any subsequent proceeding concerning the person who requested it and who acted in good faith, unless material facts were omitted or misstated by the person in the request for opinion or related supporting documentation.

All Concur:

Paul Shechtman, Chair  
Robert J. Giuffra, Jr.  
Henry G. Gossel

Lynn Millane  
O. Peter Sherwood, Members

Dated: October 18, 2001