

**59-10-514.1 Definitions -- Requirement to file returns by electronic means -- Exceptions -- Waiver.**

- (1) As used in this section:
  - (a) "Electronic" is as defined in Section 59-12-102.
  - (b)
    - (i) Except as provided in Subsection (1)(b)(ii), "income tax return preparer" means an individual that prepares for compensation a return required to be filed by this chapter.
    - (ii) "Income tax return preparer" does not include an individual who:
      - (A) performs only one or more of the following relating to a return required to be filed by this chapter:
        - (I) types the return;
        - (II) reproduces the return; or
        - (III) performs an action similar to Subsection (1)(b)(ii)(A)(I) or (II) as determined by the commission by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
      - (B) prepares a return required to be filed by this chapter:
        - (I) of the individual's employer or an officer or employee of the employer if the individual is regularly and continuously employed by that employer;
        - (II) of any person if that individual is a fiduciary for that person; or
        - (III) for a taxpayer in response to a tax order issued to that taxpayer.
  - (c) "Prepare" means to prepare a substantial portion or more of a return required to be filed by this chapter.
  - (d)
    - (i) Except as provided in Subsection (1)(d)(ii), "qualifying return" means a return required to be filed by this chapter for any taxable year that begins on or after the January 1 described in Subsection (2)(c)(i).
    - (ii) "Qualifying return" does not include:
      - (A) an amended return; or
      - (B)
        - (I) a return filed for any taxable year that begins before the first day of the current taxable year; and
        - (II) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining "current taxable year".
- (2)
  - (a) Subject to Subsections (2)(b) and (c) and except as provided in Subsection (3), an income tax return preparer shall file all qualifying returns by electronic means if the income tax return preparer prepares in any calendar year beginning on or after January 1, 2005, a total of 101 or more returns required to be filed by this chapter.
  - (b)
    - (i) For purposes of Subsection (2)(a), if two or more income tax return preparers are affiliated with the same establishment, the total number of returns required to be filed by this chapter that are prepared in a calendar year beginning on or after January 1, 2005, by all of the income tax return preparers that are affiliated with that establishment shall be included in determining whether an income tax return preparer prepares in a calendar year beginning on or after January 1, 2005, a total of 101 or more returns required to be filed by this chapter.
    - (ii) For purposes of Subsection (2)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule determine the circumstances

under which two or more income tax return preparers are affiliated with the same establishment.

- (c) If an income tax return preparer is required by this Subsection (2) to file all qualifying returns by electronic means, the income tax return preparer shall file those qualifying returns by electronic means:
  - (i) beginning on January 1 of the first calendar year immediately following the day on which the income tax return preparer meets the requirements of this Subsection (2); and
  - (ii) for all calendar years after the calendar year described in Subsection (2)(c)(i).
- (3) An income tax return preparer is not required to file a qualifying return by electronic means if:
  - (a) a schedule required to be attached to the qualifying return cannot be filed by electronic means;
  - (b) the taxpayer for which the qualifying return is prepared requests in writing that the income tax return preparer not file the qualifying return by electronic means; or
  - (c) subject to Subsection (4), the commission waives for one or more qualifying returns filed by the income tax return preparer the requirement imposed by this section to file the qualifying returns by electronic means.
- (4)
  - (a) For purposes of Subsection (3)(c), the commission may waive for one or more qualifying returns filed by an income tax return preparer the requirement imposed by this section to file the qualifying returns by electronic means if the income tax return preparer demonstrates to the commission that it would be an undue hardship to file the qualifying returns by electronic means.
  - (b) For purposes of Subsection (4)(a) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule define the circumstances that constitute an undue hardship to file a qualifying return by electronic means.

Amended by Chapter 201, 2010 General Session