

FTC Enforcement Policy: Tax Debt Relief Services and The Debt Relief Amendments to the Telemarketing Sales Rule

On August 19, 2010, the Federal Trade Commission (“FTC” or “Commission”) published amendments to the Telemarketing Sales Rule (“TSR” or “Rule”) addressing the practices of providers of debt relief services. The amended Rule covers entities engaged in the telemarketing of services that assist consumers with settling or otherwise reducing unsecured debt. All provisions of the Rule, other than the provision prohibiting the collection of fees prior to the performance of services – commonly referred to as the advance fee ban – took effect on September 27, 2010. Compliance with the advance fee ban is required as of October 27, 2010.

During the course of the Commission’s education and outreach efforts following publication of the Rule, certain providers of services to assist consumers in reducing, renegotiating, or settling their federal or state tax debts expressed concern and uncertainty about the coverage of those services under the Rule. These providers have questioned whether tax debts are “unsecured,” and thus subject to the Rule, arguing that the Internal Revenue Service obtains a lien on an individual’s current or future assets upon administrative assessment of a tax debt.

The Commission is in the process of considering these concerns and, until further notice, will defer any enforcement action for violation of the TSR’s debt relief amendments¹ with respect to the provision of programs or services that represent, directly or by implication, to renegotiate, settle, or alter the terms of a tax obligation between a person and a taxing entity (“tax debt relief services”). The Commission emphasizes, however, that tax debt relief services remain subject to other TSR provisions and Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, which prohibits unfair or deceptive acts or practices. The Commission will closely monitor this industry and will bring enforcement actions, as appropriate, against providers of tax debt relief services that make false or unsubstantiated claims. The Commission is considering other options, including additional rulemaking, to address deception and abuse within the tax debt relief industry.

This deferral of enforcement applies only to tax debt relief services. The Commission will enforce the TSR as to other debt relief services according to the schedule set forth in the Rule.

For questions regarding this enforcement policy, please contact Evan Zullow or Stephanie Rosenthal, Bureau of Consumer Protection, 202-326-3224.

¹ 16 C.F.R. § 310.2(m) (definition of “debt relief service”); 16 C.F.R. § 310.3(a)(1)(viii) (disclosure provisions for debt relief services); 16 C.F.R. § 310.3(a)(2)(x) (prohibition on misrepresentations for debt relief services); 16 C.F.R. § 310.4(a)(5) (ban on advance fees for any debt relief service); and 16 C.F.R. § 310.6(b)(5-6) (subjecting inbound calls in response to advertisements related to debt relief services to the TSR).