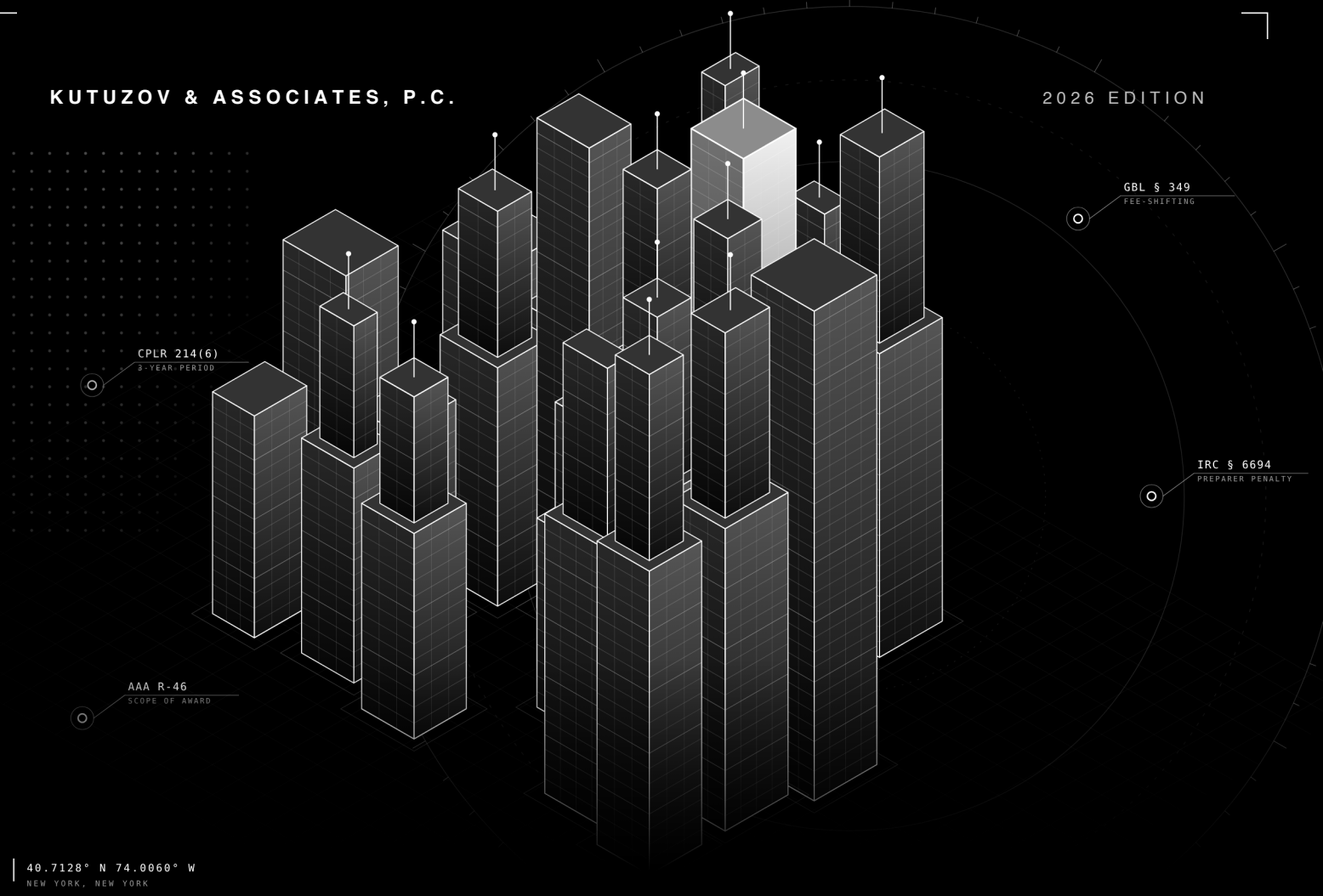
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FOR TAXPAYERS, TAX PROFESSIONALS, AND THEIR ADVISERS

NEW YORK TAX MALPRACTICE

LIABILITY OF TAX PREPARERS AND ADVISERS: STANDARD OF CARE, DAMAGES, ATTORNEY FEES, AND DEADLINES

New York State and Second Circuit authority, with comparative sources, on how courts treat economic and consequential damages, nonpecuniary loss, and attorney's fees when a tax preparer or adviser errs.

KUTUZOV & ASSOCIATES, P.C. • 55 Broadway, Floor 3, New York, NY 10006
+1 646 8374669 • viacheslav@kutuzov.esq • www.kutuzov.org

AUTHOR: VIACHESLAV KUTUZOV — KUTUZOV & ASSOCIATES, P.C.

WEBSITE: WWW.KUTUZOV.ORG

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ABOUT THIS GUIDE

This guide explains how New York law treats the money a taxpayer may recover when a tax preparer, accountant, or adviser makes an error: economic and consequential damages, nonpecuniary loss, and attorney's fees under a contract, under New York's consumer-protection statutes, or despite an express contractual exclusion. It also covers limitation periods, the standard of care for return preparation, exclusions and waivers, and arbitration. It is written for taxpayers, tax professionals, and their advisers, including readers who are prepared to read the authorities, and it cites its sources throughout. Bracketed numbers in the text refer to the source register in Part IX. Part I gives short answers; the later parts give the analysis and the authority.

I QUESTIONS PRESENTED AND SHORT ANSWERS

This guide examines the types of recoverable economic damages, including consequential and incidental losses, and whether a taxpayer can recover emotional distress and other nonpecuniary damages arising from deficient tax advice or preparation, and whether the taxpayer can recover attorney's fees under a contract, New York consumer-protection legislation, or despite an express contractual exclusion. It addresses New York substantive law and federal arbitration principles relevant in the Second Circuit. This guide is a general research reference, not an opinion on any particular matter or a representation that the authorities have received comprehensive citator clearance. Authorities were re-checked against public-source texts as described in Part X; items that could not be verified are flagged there.

Economic damages and personal time. The core claim is the client's actual, uncompensated financial loss caused by the error: avoidable tax liabilities, causally attributable penalties, reasonable correction costs, and specifically proved lost earnings. Personal search time, inconvenience, and hypothetical opportunities do not become damages merely by multiplying hours by an asserted rate. Contract and malpractice theories require separate analysis; a distinct consumer-protection claim may support lost-time injury in appropriate circumstances. Evaluate statutory prejudgment interest, nominal contract damages, and any preparation-fee refund separately, without duplication. Part IV.A explains the categories, proof, and limitations. [8, 33, 57–72]

Preparer diligence and tax minimization. Competent return preparation requires reasonable inquiry and treatment of tax benefits relevant to the accepted work; it does not ordinarily guarantee every conceivable tax-saving arrangement. Scope, actual advice, known facts, professional standards, and timely planning opportunities determine whether more scrutiny or advice was required. No New York decision located requires a preparer to find every lawful tax break, and none squarely rejects a duty to raise a material benefit that the known facts reveal; the standard is that of a reasonable accountant under similar circumstances, usually proved by expert testimony. Berg v Eisner permits a missed-election claim to proceed where related planning was undertaken, but does not impose universal exhaustive planning. Deane permits reliance on client information absent apparent defects; this does not excuse ignoring warning signs. Part II.A distinguishes preparation, inquiry, research, planning, and implementation. [73–102]

Nonpecuniary damages. Ordinary anxiety, frustration, inconvenience, and disruption resulting from a financial tax error are a weak basis for recovery. The controlling Court of Appeals prohibition in *Dombrowski v Bulson*, 19 NY3d 347 (2012), concerns attorney malpractice; extending it categorically to every accountant or retail preparer would overstate its holding. The stronger accounting analysis combines that analogy with New York's restrictive rules for negligent infliction of emotional distress and contract damages. A genuinely independent intentional tort, personal injury, or other legally protected interest requires separate analysis. The searches did not surface a New York decision awarding or squarely denying nonpecuniary damages against an accountant or tax preparer, which is why the analysis proceeds by analogy. Medical evidence can prove injury, but cannot create a duty or remedy the law does not recognize. [1–5]

Attorney's fees. There are three materially different routes: compensation for reasonable corrective legal work caused by the original wrong; contractual shifting of the costs of the dispute; and statutory fees for a successful consumer-protection claim. Ordinary malpractice liability does not automatically shift the fees of suing the preparer. That follows from the American Rule (*Hooper*; *Flemming*; *Chapel v Mitchell*), subject to agreement: a retainer's prevailing-party clause has been applied to a client's malpractice claim (*Frankel v Vernon & Ginsburg, LLP*, 160 AD3d 528 (1st Dept 2018)). GBL §349(h) can supply discretionary fees without a contractual fee clause, but only if an actionable deceptive consumer practice and resulting injury are established. GOL §5-327 separately creates nonwaivable reciprocity when a qualifying consumer contract gives the provider breach-related fee rights. The statute expressly reaches services; the searches did not surface a decision applying it to tax preparation or accounting services. [7–12]

Express exclusions. Silence, a general own-fees clause, an express statutory waiver, and a negotiated post-dispute release are different instruments. Section 349 contains no general express anti-waiver provision comparable to §5-327. A prospective exclusion of statutory fees is vulnerable to public-policy and unconscionability arguments, especially in a mandatory consumer arbitration agreement, but this research did not locate a controlling New York appellate decision conclusively invalidating every express §349 fee waiver. A claim should not be valued on that assumption. The actual agreement and incorporated rules are essential. [11–19]

II SCOPE GOVERNING AUTHORITY AND PREPARER DILIGENCE

This guide addresses damages and fee recovery across tax-preparation and tax-advice disputes. It assumes no particular taxpayer, provider, transaction, tax year, contract, or amount of loss. Application requires separate proof of the underlying tax error, the defendant's duty and breach, causation, mitigation, and uncompensated injury. Corrective expenses, tax liabilities, refunds, and contractual reimbursements must be reconciled before valuing any claim.

Analyze each actor and undertaking separately. A CPA's work, a seasonal preparer's service contract, a lawyer's tax advice, software, and a financial institution's account administration are not interchangeable. Identify the contracting franchisee and any basis for liability of an affiliated entity. Whether an individual preparer qualifies as a professional, and whether an ordinary-negligence claim has an independent duty despite a service contract, remain threshold questions outside this guide's principal scope. A damages theory cannot substitute for a viable cause of action.

Limitations and privity. A malpractice claim against a licensed accountant is governed by the three-year period of CPLR 214(6) whether pleaded in tort or contract, and it accrues when the client receives the work product, not when a taxing authority assesses (*Ackerman v Price Waterhouse*, 84 NY2d 535 (1994)) [28]. Continuous-representation tolling is narrow and does not link separate annual engagements (*Williamson v PricewaterhouseCoopers LLP*, 9 NY3d 1 (2007)) [29]. Whether an unlicensed seasonal preparer is a "professional" for CPLR 214(6) turns on *Chase Scientific Research, Inc. v NIA Group, Inc.*, 96 NY2d 20 (2001) (insurance agents are not) [30]; if the preparer is not, the three-year negligence period (CPLR 214[4]) and six-year contract period (CPLR 213[2]) must be analyzed separately. The searches did not surface a decision on the status of a non-CPA preparer under CPLR 214(6). A GBL §349 claim has its own three-year period (CPLR 214[2]) [32]. A fraud theory has its own period under CPLR 213(8), the greater of six years from accrual or two years from discovery [105]; whether it is separate from, or duplicative of, the malpractice claim on a given record requires its own research. A written agreement may shorten the limitations period if the shorter period is reasonable (CPLR 201; *John J. Kassner & Co. v City of New York*, 46 NY2d 544, 551 (1979); *Executive Plaza, LLC v Peerless Ins. Co.*, 22 NY3d 511 (2014)) [103, 106], so a short contractual deadline in an engagement letter must be calendared and analyzed on its own terms. A claim accruing outside New York must also satisfy the borrowing statute, CPLR 202: it must be timely under both New York's period and that of the place of accrual, except that New York's period alone applies where the claim accrued in favor of a New York resident; purely economic injury is ordinarily sustained where the plaintiff resides (*Global Financial Corp. v Triarc Corp.*, 93 NY2d 525 (1999)) [104, 107]. For non-client claimants, accountant negligence liability requires privity or its functional equivalent (*Credit Alliance Corp. v Arthur Andersen & Co.*, 65 NY2d 536 (1985); *Parrott v Coopers & Lybrand, L.L.P.*, 95 NY2d 479 (2000)) [31].

New York Court of Appeals holdings control New York substantive law. Appellate Division authority must be assessed in light of the department governing the action and any relevant interdepartmental differences. A federal court applying New York law must respect intervening state high-court authority; federal predictions are not superior to it. Second Circuit published decisions control federal issues in the circuit; summary orders are nonprecedential. District and out-of-state decisions are identified as persuasive. Federal tax questions in the background do not themselves establish federal jurisdiction: apply the embedded-question framework of *Gunn v Minton*, 568 US 251, 258–264 (2013) (the test originates in *Grable & Sons Metal Products, Inc. v Darue Engineering & Manufacturing*, 545 US 308 (2005), itself a federal-tax-notice case), and independently assess diversity or another jurisdictional basis. [23]

A TAX PREPARER DILIGENCE AND THE LIMITS OF TAX MINIMIZATION

A preparer is not ordinarily an insurer that the client has paid the lowest tax achievable through every conceivable lawful arrangement. The relevant inquiry is whether the preparer used the care and competence reasonably required for the services undertaken, in light of the facts known or reasonably calling for inquiry at the time. On the authorities located, that inquiry may require identifying and discussing a tax benefit the client did not ask about where the engagement or the facts known to the preparer bring it within the work (*Berg*; *1650 Broadway*), but no appellate decision located so holds on the merits for a deduction, credit, or election that the client never raised and the file did not suggest. The searches for this review found no New York decision that squarely imposes, or squarely rejects, a

duty to identify every lawful way to reduce tax; that negative result describes the searches, not the state of the law. It does not equate routine return preparation with an unlimited engagement to redesign the client's business, investments, retirement arrangements, estate plan, and cross-border affairs. This is a synthesis of the authorities below, not a New York holding announcing a universal list of required deductions. [73–102]

The general formulation is that a plaintiff must show a departure from accepted standards of practice that proximately caused the injury (*KBL, LLP v Community Counseling & Mediation Servs.*, 123 AD3d 488 (1st Dept 2014); *Deane v Brodman*, 192 AD3d 577 (1st Dept 2021)). The First Department's most recent description of the yardstick is that an accountant must perform all services in accordance with "the standard of a reasonable accountant under similar circumstances" (*1650 Broadway Assoc., Inc. v Sturm*, 228 AD3d 1 (1st Dept 2024)). No Court of Appeals formulation in those words was located. [86, 87, 99]

Distinguish three questions: what work the professional undertook; how carefully that work had to be performed; and whether an omission caused a provable loss. A narrow engagement can limit the first question without eliminating the duty to perform the agreed work competently. Conversely, proof that a different adviser later devised a lower-tax strategy does not, by itself, establish that the original preparer breached the applicable standard.

1 SCOPE OF THE ENGAGEMENT AND THE NEW YORK DECISIONS

Berg v Eisner LLP, 94 AD3d 496 (1st Dept 2012), directly addresses an allegedly missed tax-saving election. The client alleged that the accountants failed to identify an election permitting a substantial write-off of securities trading losses. The court reinstated the complaint: alleged tax-planning advice concerning trading income brought the election issue within the engagement, and professional standards could extend the duty beyond the agreement's express terms. Whether failing to raise the election departed from those standards required expert evidence. The opinion does not identify the election by name. Berg reversed dismissal; it did not adjudicate liability or require every return preparer to identify every conceivable election. [73]

The signed engagement letter is therefore important but not necessarily the entire undertaking. Review actual advice, emails, prior planning work, specific requests accepted, and assurances about particular tax results. In *Island Consolidated v Grassi & Co., Certified Public Accountants PC*, 239 AD3d 443 (1st Dept 2025), the accountants allegedly agreed to provide sales-tax advice outside the enumerated services without a separate engagement. The court declined to dismiss based on contractual notice and mediation provisions whose application to that advice was not unambiguous. That procedural holding does not establish a general duty to furnish unsolicited planning; it demonstrates why work actually undertaken matters. [76]

The later decision, *Island Consolidated v Grassi & Co., Certified Public Accountants PC*, 2026 NY Slip Op 01308 (1st Dept Mar. 10, 2026), reinstated defenses based on conditions precedent and liability limitations. A factual issue remained whether the parties' course of dealing incorporated terms from engagement letters for other services into the sales-tax advice. The 2025 ruling had not decided those defenses on the merits. The 2026 decision separately sustained dismissal of the limitations defense on continuous-representation grounds. It does not finally adjudicate the enforceability or application of a damages cap. [89]

Engagement terms matter, but do not resolve every standard-of-care question. In *Channel Fabrics, Inc. v Skwiersky, Alpert & Bressler LLP*, 222 AD3d 512 (1st Dept 2023), a limited review engagement and conclusory allegations of deficient procedures supported dismissal. In *1650 Broadway Associates, Inc. v Sturm*, 228 AD3d 1 (1st Dept 2024), the court reinstated claims concerning compilation and tax services: an unaudited engagement did not excuse failure to report fraud that was or should have been apparent to a reasonable accountant in the circumstances. These decisions concern financial reporting and alleged fraud, not a universal search for tax breaks. Together they illustrate why both the scope and concrete indications of a problem must be examined. [87–88]

A client who buys annual return preparation ordinarily has a different undertaking from one who retains a specialist to evaluate transaction structures, optimize multiyear tax exposure, or advise before a sale. But "preparation only" should not be treated as permission to disregard an apparent filing choice, carryforward, deduction, credit, or election relevant to preparing the accepted return. The practical boundary is between competent treatment of the client's disclosed or reasonably discoverable tax facts and an additional project to change those facts or create a new planning structure. Borderline cases require evidence of customary professional practice.

2 REASONABLE FACTUAL INQUIRY IS NOT A FULL AUDIT

Deane v Brodman, 192 AD3d 577 (1st Dept 2021), is particularly relevant to factual inquiry in tax preparation. The court granted summary judgment because the plaintiff failed to identify a professional standard requiring the accountants to investigate whether transactions were authorized under an operating agreement. The plaintiff's own expert's standards permitted reliance on taxpayer information absent apparent error, incompleteness, or inconsistency; no such defect was alleged. Deane supports reasonable reliance in that setting, not immunity from investigating material warning signs or applying tax law to the supplied facts. [86]

Treasury Regulation §1.6694-1(e) expressly permits good-faith reliance on taxpayer information for preparer-penalty purposes without independently auditing books, records, operations, and supporting documents. That permission does not allow the preparer to ignore the implications of known information. Apparently incorrect or incomplete information requires reasonable inquiry, and the preparer must inquire into conditions that the tax law specifically requires before a deduction or credit may be claimed. The regulation addresses preparer penalties; it is useful evidence of the distinction between inquiry and independent verification, not a complete definition of New York malpractice liability. [77]

A reasonable preparation process should elicit facts relevant to the accepted return, follow up on material gaps or contradictions, and evaluate the tax treatment of the resulting information. As practical examples, a supplied prior return showing an unused carryforward, records reflecting tuition, or information revealing business asset purchases may call for further inquiry and legal analysis. None automatically establishes eligibility for a benefit. The preparer need not invent undisclosed transactions or reconstruct every aspect of the client's financial life without a factual trigger. These examples illustrate the inquiry, not holdings establishing automatic liability for each missed item.

Do not confuse the general inquiry standard with the special statutory due-diligence regime. Treasury Regulation §1.6695-2 imposes specific checklist, computation, knowledge, and record-retention requirements for covered credits and head-of-household determinations, including EITC, child-related credits, and the American opportunity credit. Information that appears incorrect, inconsistent, or incomplete calls for further reasonable questions and documentation of the inquiry. These requirements do not impose a universal Form 8867 process for every tax benefit, nor do they create a general duty to search for every possible deduction. [78]

3 THE DEPTH OF LEGAL RESEARCH AND WHEN TO OBTAIN SPECIALIST ASSISTANCE

No authority identified in this review supplies a fixed number of research hours, a mandatory search of every Code provision, or a monetary threshold below which competent analysis may be omitted. Assess the issue's relevance to the engagement, factual indicators, complexity and uncertainty, financial significance, deadlines, and the preparer's represented expertise. A familiar filing issue may require routine verification; an unfamiliar election affecting a substantial liability may require focused research or specialist consultation. The test is a reasonable professional process evaluated at the time, not perfect hindsight.

Circular 230 §10.35 ties competence to the particular matter and recognizes acquiring the necessary competence through study or consultation. Section 10.37 requires reasonable factual and legal assumptions and an application of relevant authorities to the facts; its review expressly considers the scope of the engagement and the specificity of the advice requested. Where those provisions apply, they support proportionate but substantive analysis rather than either exhaustive research on unrelated matters or reliance on an unsupported answer. Their jurisdictional limits are addressed below. [79–80]

A modest fee or compressed timetable does not authorize careless performance of accepted work. If the necessary analysis cannot responsibly be completed within the existing scope or deadline, a sound response is to explain the issue promptly, obtain appropriate assistance or agree on additional work, and consider a lawful extension or other protective step where available. An extension to file does not necessarily extend the time for an election or payment. If the engagement must end, communicate the unresolved issue and imminent deadlines clearly. These are practical risk-management applications; a specific mandatory referral or warning duty must be established under the governing professional standard.

Software, organizers, checklists, and AI research can assist the process but do not determine the legal standard. A completed checklist is not conclusive where the file contains contradictory facts; a program's omission of a benefit is not, standing alone, a defense. Conversely, failure to use a particular product is not itself malpractice. Examine whether the preparer reasonably gathered, evaluated, and acted on the information needed for the accepted work.

4 IDENTIFYING AN OPPORTUNITY IS DIFFERENT FROM IMPLEMENTING A PLAN

Some benefits concern how to report events that have already occurred. Others require the taxpayer to contribute money, adopt a plan, make a timely election, acquire or dispose of property, change an entity structure, or accept future consequences. A duty to identify or flag a material issue does not necessarily require implementing the full strategy within an ordinary preparation fee. The preparer may need to explain the opportunity and deadline and clarify who will analyze and carry it out. Whether even that warning is required depends on the engagement, the facts, and the applicable professional standard.

For example, omitting an apparent carryforward from an accepted return presents a different problem from failing to recommend a new holding-company structure. A timely client question about retirement contributions or an election demands an appropriate response if the preparer accepts that advice task; the response may identify the need for additional analysis rather than promise a result. If the preparer affirmatively recommends a transaction or election and undertakes the necessary filings, failure to implement that advice is more readily tied to an identified duty than a general complaint that the client's tax was too high.

NFGTV, Inc. v Lutz & Carr Certified Public Accountants, LLP, 79 Misc 3d 1241(A), 2023 NY Slip Op 50849(U) (Sup Ct, NY County 2023), illustrates the implementation distinction. The accountants advised that an accounting-method change required Form 3115, filed it for one company but not another, and later acknowledged the omission and its tax effects. The court granted summary judgment on liability. The appeal was later withdrawn (2024 NY Slip Op 63560(U)); that was not an appellate merits affirmance. This trial-level decision concerns an identified, undertaken filing obligation, not an exhaustive search for tax-saving strategies. [75]

"Minimization" also needs an agreed objective. The smallest current-year liability may produce larger future tax, recapture, loss of another benefit, compliance expense, investment risk, or liquidity constraints. The taxpayer may reasonably reject an otherwise lawful strategy. Document the material alternatives actually evaluated, their assumptions and tradeoffs, the client's decision, and responsibility for implementation. A promise of comprehensive planning or a specific maximum-refund guarantee requires analysis of its actual wording and may enlarge the contractual undertaking; do not infer unlimited planning from a generic description of tax preparation.

5 ACCEPTABLE SCRUTINY AND DEFICIENT SCRUTINY IN PRACTICE

The following comparison is a practical framework for investigation and expert analysis. It is not a statutory checklist or a holding that the examples alone prove malpractice.

Situation	Reasonable response	Problem to investigate
Routine return facts	Gather relevant information and analyze apparent benefits and filing choices.	Copying figures while ignoring a visible carryforward or unresolved eligibility facts.
Incomplete or conflicting information	Ask targeted follow-up questions and document material answers.	Blind reliance despite a material inconsistency; inventing facts to obtain a credit.
Unfamiliar issue within scope	Research sufficiently, consult, or arrange competent assistance before acting.	An unsupported answer because the issue is complex or the fee is small.
New planning project	Clarify scope, urgency, cost, and responsibility; assess whether a warning is required.	Assuming a routine return fee includes every restructuring strategy, or ignoring a planning task actually accepted.

Situation	Reasonable response	Problem to investigate
Competing lawful choices	Evaluate relevant tax and practical consequences and obtain the client's decision.	Treating the lowest current-year tax as automatically the best overall outcome.
Known election or correction deadline	Identify the applicable deadline and who will act; verify available relief.	Assuming an ordinary filing extension preserves every election or refund opportunity.

6 REGULATORY STANDARDS AND CIVIL LIABILITY MUST BE KEPT SEPARATE

Circular 230 §§10.21, 10.22, and 10.34 address notification of known errors, diligence in accuracy, return-position standards, and reasonable reliance on client information. The IRS Office of Professional Responsibility's February 17, 2026 bulletin, "Drawing the Line: Tax Return Preparation vs. Practice," emphasizes that merely preparing returns is not practice before the IRS. Identify the person's status and activity before treating Circular 230 as directly enforceable; the bulletin also notes that participants in the voluntary Annual Filing Season Program consent to Circular 230 Subpart B and §10.51. Do not apply every Circular 230 provision indiscriminately to every paid preparer, or assume that lack of OPR jurisdiction eliminates duties under the Code, state law, or the engagement. [81–82]

For covered preparers, 20 NYCRR Part 2600 addresses accuracy, inquiry, and advice. Section 2600-1.1 links coverage to registration under Tax Law §32; the statutory definition in §32(a)(14) excludes, among others, attorneys, CPAs, public accountants, enrolled agents, and specified supervised employees. Identify the provider and applicable licensing regime before applying Part 2600. Its §§2600-4.3(b) and (h)(6) address diligence and reliance. [83, 90]

Under §2600-3.1(b), disciplinary noncompliance requires willfulness, recklessness, or gross incompetence. Separate grounds concern incompetence or disreputable conduct and intentional fraud; it would be inaccurate to collapse every disciplinary ground into subsection (b). Section 2600-3.2 makes the specified best practices aspirational and insufficient alone for discipline. These disciplinary thresholds do not define the ordinary-negligence standard for a civil malpractice claim. [83]

The AICPA's Statements on Standards for Tax Services, effective January 1, 2024, apply to its members; establish the version and any other adoption applicable to the defendant. SSTS No. 2, §§2.3.2–2.3.3, permits good-faith reliance but requires reasonable inquiry into apparent defects and tax-law conditions. Sections 2.3.2 and 2.3.9 call for considering prior returns when feasible. Section 2.1.3 includes advice about completed events directly relevant to a return within return preparation. SSTS No. 1, §§1.4.4 and 1.4.7–1.4.8, preserves professional responsibility when using tools. These provisions support informed preparation, not an express guarantee to discover every possible tax-saving structure. Professional standards may inform expert testimony; noncompliance alone does not establish all elements of civil liability. [84, 91]

Lawful planning must also be distinguished from unsupported tax positions. IRC §6694 governs preparer penalties for understatements, including the substantial-authority standard, the reasonable-basis rule for qualifying disclosed positions, and the special rule for tax shelters and covered reportable transactions. A missed benefit that produces an overpayment does not itself trigger this understatement penalty; a state-law missed-benefit claim must rest on an independently established duty and its other elements. These rules constrain positions; they do not promise that every permissible position must be recommended. A client cannot require a preparer to claim an ineligible benefit or rely on the chance of escaping audit. Avoiding an unreasonable position can be correct even though it produces more tax. [80, 85]

7 TIMING AND OPPORTUNITIES TO PRESERVE OR RESTORE A BENEFIT

Determine when the preparer was retained and what lawful action remained possible then. A return filed after year-end may still permit some contributions or elections, while other opportunities require action earlier. The following is a screening guide, checked October 26, 2026, not a deadline opinion for a particular taxpayer. Verify the relevant tax year, entity, filing and payment history, disaster or other postponements, and any transitional relief. A filing extension, an election extension, and a refund deadline are separate questions. [92–98]

Benefit or remedy	Ordinary timing issue	Required qualification
IRA and HSA contributions	Generally the return due date without extensions for the contribution year.	IRC §§219(f)(3), 223(d)(4)(B). Establish eligibility, actual funding, and any applicable postponement; a filing extension alone does not extend funding. [92]
Retirement-plan adoption and contributions	Plan adoption, elective deferrals, and employer funding have different rules.	IRC §401(b)(2) permits qualifying retroactive adoption by the employer's extended return deadline. A separate first-year exception for an individual who owns the entire interest in an unincorporated business and is its only employee (SECURE 2.0 §317, added to §401(b); plan years beginning after December 29, 2022) allows elective deferrals by the individual's unextended return deadline. Do not extend that exception to all solo plans; check SEP and funding rules separately. [93]
Section 179 election	Original return or a qualifying amended return within the legally permitted period.	IRS Form 4562 instructions permit an amended election; identify the property and make related adjustments. Do not assume a benefit is lost merely because the original return omitted it. [94]
Bonus-depreciation election out	Generally a timely return including extensions.	Instructions describe six-month corrective relief where the original return was timely; the period runs from the unextended due date. Check the year's special rules and relief before declaring the election unavailable. [94–95]
Section 475(f) election	Existing taxpayer: generally the prior year's unextended return due date; new taxpayers have a separate rule.	IRS Topic 429 states late elections generally are unavailable. *Vines* granted §301.9100-3 relief on its facts: the trader relied on accountants who did not know of the election, sought relief before the IRS found the omission, and made no trades before filing late, so the court found no hindsight benefit and no prejudice to the Government. Later private letter rulings (nonprecedential) denied relief on hindsight and prejudice grounds. Assess eligibility for relief rather than treating every late election as automatically barred. [96–97, 102]
Refund claim for an omitted benefit	Generally three years from filing or two years from payment, whichever is later; if no return, generally two years from payment.	IRC §6511(a) is only the first test. Section 6511(b) separately limits the recoverable payments through lookback rules. Determine actual and deemed payment dates, extensions, and exceptions; an open claim period does not ensure a refund. [98]
Other regulatory elections	Check automatic relief under §301.9100-2, then discretionary relief under §301.9100-3 if applicable.	Discretionary relief requires reasonable action and good faith and protection of government interests. Professional reliance may matter; relief is not automatic and these rules do not generally reopen statutory deadlines. [95]

For damages, distinguish a benefit irretrievably lost before retention, one lost during the engagement, and one still recoverable through reasonable corrective action. Establish the cost and prospects of relief before treating the entire tax difference as permanent loss. Do not assume an expensive discretionary ruling request is necessarily required

mitigation in every case; assess proportionality and the governing damages rules. This is an analytical framework, not a tax-malpractice holding imposing every listed corrective step.

8 PROVING A MISSED BENEFIT AND MEASURING THE RESULTING LOSS

A missed-benefit claim should identify the specific deduction, credit, election, or planning step; why reasonable care required addressing it within this engagement; the facts available before the relevant deadline; and the action the taxpayer would and could have taken. Establish eligibility under the law for the relevant tax year, required documentation and consents, funding or other practical prerequisites, the client's willingness to accept the tradeoffs, and the actual net tax difference. Do not infer causation merely because another adviser later suggested a strategy.

Expert evidence should explain the professional standard and the departure, not merely calculate a hypothetical tax saving. *Menard M. Gertler, M.D., P.C. v Sol Masch & Co.*, 40 AD3d 282 (1st Dept 2007), affirmed a directed verdict after trial where the expert addressed damages but did not establish the applicable professional standards and the proposed investment-related damages rested on speculation. Its broad tax-and-interest language must be read with the tax-specific distinctions in Part IV.A.3, not used to erase all claims for lawfully avoidable tax. [74]

Two examples show how causation is tested. In *Rockman v Bartlett*, 49 AD3d 1072 (3d Dept 2008), a preparer deducted only part of a rental-property loss and the taxpayer later filed an amended return claiming all of it; the IRS audited and disallowed it. The court affirmed denial of the taxpayer's motion for partial summary judgment, finding at least questions of fact on malpractice and rejecting a causation theory (that the amended return triggered the audit) that rested on a CPA affidavit "based entirely upon speculation" [100]. Out-of-state authority is persuasive only. The Eighth Circuit, applying Minnesota law, held that a CPA was not negligent in failing to claim an estate-tax deduction that was unavailable under the statute in force when the return was prepared, and that she was not liable for failing to anticipate a later amendment (*Schreier*) [101]. Whether the benefit was available under the law at the time is therefore a threshold question.

Investigate correction before treating the entire tax difference as permanent damage: an amended return, refund claim, or available election relief may restore part or all of the benefit, subject to separate substantive requirements and deadlines. Deduct recovered benefits and identify additional implementation costs, offsets, and future tax consequences. Where the benefit survives, reasonable correction costs or a proven loss from delay may remain, but the recovered tax saving cannot also be claimed as lost. Part IV supplies the damages and interest analysis. A later adviser's involvement does not automatically eliminate the original preparer's liability; evaluate actual corrective opportunities and causation.

For case evaluation, obtain the engagement and scope changes, relevant questionnaires and client communications, source documents and prior returns actually available, research and review records, rejected or recommended alternatives, and the deadline chronology. Ask the expert what competent preparation or advice required at that time and why. The central question is not whether more tax planning was imaginable; it is whether the professional omitted work, inquiry, advice, or implementation that reasonable care required in the undertaking actually accepted.

III NONPECUNIARY DAMAGES

A ORDINARY PROFESSIONAL NEGLIGENCE

Dombrowski rejected nonpecuniary recovery against criminal-defense counsel even for loss of liberty following alleged malpractice. Its express rule is attorney malpractice, and its reasoning distinguishes negligent representation from deliberate torts. It strongly supports restricting damages when a tax lawyer negligently handles a financial matter. For an accountant or nonlawyer preparer, cite it as an analogy and explain the separate emotional-distress doctrine rather than describing it as an accounting-malpractice holding. Its policy discussion also shows why the seriousness of a plaintiff's suffering alone does not determine the scope of the defendant's duty. [1]

The economic character of ordinary tax services matters. A preparer ordinarily undertakes to calculate, report, advise on, or correct tax obligations. Foreseeability that an error will upset the taxpayer is not equivalent to a legal

undertaking to protect emotional tranquility. A promise of reassurance or "peace of mind" should be examined for its actual contractual meaning, but marketing language does not by itself establish a personal-injury undertaking. Research any unusually specific promise or relationship before using the ordinary financial-services analogy.

Davidovici v Fritzson, 49 AD3d 488, 489–490 (2d Dept 2008), offers a closer factual analogy than attorney malpractice alone. An accountant, who was also employed as a loan originator by a mortgage business, allegedly embezzled from the corporate plaintiffs' accounts. On the appeal by the mortgage business and its shareholder, the court dismissed the negligent hiring and supervision claim for lack of proximate cause and dismissed the sole shareholder's negligent-infliction claim because no conduct endangering his physical safety, or causing fear for it, was alleged. The decision does not announce a universal accountant-malpractice damages rule and did not decide the accountant's liability. It nevertheless illustrates the obstacle to converting financial misconduct into negligent emotional-distress recovery. [2]

B NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

Under *Taggart v Costabile*, 131 AD3d 243, 252–256 (2d Dept 2015), extreme and outrageous conduct is not an essential element of negligent infliction of emotional distress. A direct duty, its breach, direct emotional injury, and a sufficient guarantee of genuineness remain important. Outside recognized special circumstances, the claim generally requires danger to the plaintiff's physical safety or fear for that safety. The court's rejection of an outrageousness requirement did not create a general remedy for distress from negligent financial services. The First Department has since adopted the same rule (*Brown v New York Design Center, Inc.*, 215 AD3d 1 (1st Dept 2023)), so it now reflects the position of the First through Fourth Departments; no Court of Appeals decision squarely resolves the point. The Court of Appeals' own formulation requires a duty owed directly to the plaintiff and an injury that is a direct, not consequential, result of the breach, with genuineness assured by endangerment of physical safety or recognized special circumstances such as mishandling a corpse (*Kennedy v McKesson Co.*, 58 NY2d 500, 504–506 (1983); *Ornstein v New York City Health & Hospitals Corp.*, 10 NY3d 1, 6 (2007); *Johnson v State*, 37 NY2d 378, 383–384 (1975), each as quoted in *Taggart*). [41] [3]

The distinction between direct and consequential emotional harm is central here. Distress because an accountant's error caused an unexpected bill, corrective work, or uncertainty ordinarily follows the financial loss. Merely pleading a "special relationship" because the preparer had confidential information or expertise does not establish that the relationship carried the relevant duty to protect against emotional injury. Nor does fear of an audit automatically equal fear for physical safety. If threats, a separate physical injury, or exceptional facts emerge, analyze those facts independently rather than treating the words "negligent infliction" as a solution.

In *SanMiguel v Grimaldi*, 2025 NY Slip Op 05780 (Oct. 21, 2025), the Court of Appeals held that a lack-of-informed-consent claim is a type of medical malpractice claim to which the restriction on purely emotional damages in *Sheppard-Mobley v King*, 4 NY3d 627 (2005), applies, and it declined to overrule that decision; two judges dissented. Its holding is medical and should not be imported wholesale into tax practice. Its methodological relevance is that courts examine the nature of the duty and the existing limits, and do not let a new label bypass a damages limitation. [4]

C INTENTIONAL CONDUCT CONTRACT AND OTHER LABELS

Intentional infliction of emotional distress requires extreme and outrageous conduct, intent or disregard of a substantial probability of causing severe distress, causation, and severe distress. *Howell v New York Post Co.*, 81 NY2d 115, 121–122 (1993). The threshold is exceptionally demanding. A refusal to amend, poor service, a false explanation, or repeated delay may support other theories but ordinarily does not establish this tort without substantially more. Examine duplication with other remedies and the distinct limitations period before pleading it. [5]

Contract pleading is not a dependable workaround. *Wehringer v Standard Security Life Insurance Co. of New York*, 57 NY2d 757, 759 (1982), rejects recovery for mental distress from a contract-related duty absent a duty supporting that liability. *Brown v GEICO*, 156 AD3d 1087 (3d Dept 2017), followed it after the Court of Appeals' consequential-damages decisions in *Bi-Economy* and *Panasia*, affirming dismissal of emotional-distress damages on the contract claim while reinstating a separate §349 claim. Its application in *Bettan v GEICO General Insurance Co.*, 296 AD2d

469 (2d Dept 2002), reinforces the difficulty in a financial-service dispute. A special undertaking involving deeply personal interests may require further research, but the ordinary preparation of returns and correction of financial consequences is not shown to fit such an exception. [6]

Fraud, fiduciary breach, and gross negligence also require their own elements and damages rules. Deliberate deception can be legally significant without making every form of emotional loss recoverable. Do not assume that adding an allegation of intent changes the measure of damages; identify the independent wrong and the recoverable interest it injured. Likewise, an unsuccessful attempt to enforce an exclusion for gross negligence would not itself establish entitlement to emotional damages or litigation fees. Exculpation, liability, and remedy are separate inquiries.

D AN IMPORTANT SECOND CIRCUIT DISTINCTION

Baker v Dorfman, 239 F3d 415, 418–423, 426–427 (2d Cir 2000), affirmed a malpractice award based on a lawyer's loss of the client's underlying claim for a false-positive HIV diagnosis. The underlying claim included emotional harm. That is materially different from claiming distress caused by the lawyer's own deficient service: loss of a valuable underlying cause of action is an economic loss to the client. The jury awarded $285,000 for the emotional distress attributable to the lost claim, and the judgment also included a separate fraud-based award. The case also upheld $11,178.05 in fees for the client's unsuccessful appeal in the underlying action as consequential damages incurred in mitigation (239 F3d at 426–427); those were not the fees of the malpractice suit itself. It predates *Dombrowski*, and should not be presented as a general exception permitting emotional damages directly attributable to malpractice. [7]

For tax litigation, this distinction could matter if counsel negligently destroys an independently valuable claim that already includes legally recoverable noneconomic damages. It does not help merely because a taxpayer would like emotional damages against the tax preparer. The underlying right must exist and its value, causation, and collectibility must be proved.

E OUT OF STATE ARGUMENT AND EVIDENCE

Kahn v Morse & Mowbray, 121 Nev 464, 117 P3d 227 (2005), rejects negligent emotional-distress recovery arising from pecuniary injury in legal malpractice, even where physical symptoms are alleged. It is useful persuasive support for distinguishing distress over money from invasion of a personal interest. It is not New York law and does not determine a claim against a tax preparer. A claimant's counterargument would focus on an undertaking or misconduct directed to personal security, rather than simply on the gravity of financial anxiety. [20]

Before investing in a noneconomic claim, identify the alleged tort, the duty that protects the asserted interest, the precise conduct, the injury's onset, and alternative causes. If a legally viable claim exists, contemporaneous treatment records, medication history, employment records, testimony from people with firsthand knowledge, and appropriate clinical evidence may substantiate severity and causation. Anticipate discovery of relevant preexisting conditions and privilege disputes if the condition is placed in issue. A diagnosis is evidence of harm, not a substitute for the legal predicate.

Personal research hours and inconvenience should not be assigned a lawyer's hourly rate. Documented lost wages or a specific lost business opportunity present a different, pecuniary inquiry requiring reliable proof and causation. Avoid counting both an entire lost workday and income supposedly earned during that same period. A refund of excess tax also must be reconciled with the damages calculation; the taxpayer cannot recover the same financial loss twice. See Part IV.A for the fuller analysis, including litigation-related time and the separate consumer-protection theory.

F CONSUMER LAW AND PUNITIVE DAMAGES

Do not assume that the words "actual damages" in GBL §349 establish an emotional-distress remedy for an otherwise ordinary tax error. A statutory claim is analytically distinct from malpractice, but this research did not identify controlling New York appellate authority awarding tax-preparation-related emotional distress under §349. More generally, the searches did not surface a decision on whether §349(h) "actual damages" include emotional distress. That question

remains a targeted research issue if the facts warrant it; it should not be treated as an established route around the negligence cases.

Lost personal time is distinct from emotional distress. In re General Motors LLC Ignition Switch Litigation supports a consumer-protection route for lost personal time; Part IV.A.9 explains its limited significance. That authority does not establish a tax-malpractice award for distress. [65]

Punitive damages are distinct from emotional compensation. *Hobish v AXA Equitable Life Insurance Co.*, 43 NY3d 442 (2025), holds that §349 does not authorize punitive damages beyond the statute's specified enhanced remedy. A separate common-law punitive claim requires an independently sufficient substantive basis; *Hobish* also reiterates demanding requirements for punitive recovery associated with contract claims. The Court decided *Hobish* on January 14, 2025, resolving an Appellate Division split; a separate concurrence would not have reached the §349(h) question. Neither a punitive label nor an emotional-distress demand should inflate the valuation of an otherwise modest corrective-cost dispute. [13]

IV RECOVERABLE DAMAGES AND ATTORNEY FEES

A ECONOMIC DAMAGES CONSEQUENTIAL LOSSES AND PERSONAL TIME

The practical question is what the client actually lost because of the defendant's actionable error. A client's request for compensation for "hassle" should be separated into correction expenses, identifiable earnings lost, personal time without lost income, and distress or inconvenience. These categories have different legal treatment. The applications and examples below are evaluation guidance drawn from the cited principles, not reported holdings awarding each item against a tax preparer.

1 GOVERNING PRINCIPLES AND THE DISTINCTION BETWEEN MALPRACTICE AND CONTRACT

Malpractice damages seek to place the client in the position the client would have occupied absent the professional's negligence, subject to proof of actual pecuniary loss and proximate causation. *Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438, 443 (2007), applying *Campagnola v Mulholland, Minion & Roe*, 76 NY2d 38, 42 (1990), states this make-whole principle in legal malpractice. Its application to tax-preparation losses requires attention to the defendant's professional status, duty, causation, and the governing accounting or services law. [8]

A contract count does not automatically provide a separate route to recovery. In *Gordon v Vladislav Tsirkin CPA & Co., LLC*, 229 AD3d 450 (2d Dept 2024), the contract claim was duplicative of accounting malpractice because it arose from the same facts and alleged no distinct damages. Whether a separate contract theory survives depends on the undertaking, allegations, and damages, not simply whether the engagement includes an accuracy guarantee. Thies likewise dismissed a duplicative contract theory in a legal-malpractice dispute. Apply the Kenford contemplation-at-formation analysis to consequential contract damages; do not state it as the universal measure of malpractice loss. [59, 67]

2 DIRECT CONSEQUENTIAL AND INCIDENTAL DAMAGES

Direct or general damages compensate for the immediate loss of the promised performance. Consequential or special damages concern additional losses arising from the claimant's circumstances or collateral transactions. Classification depends on the undertaking and the loss, rather than its label. *Biotronik A.G. v Conor Medsystems Ireland, Ltd.*, 22 NY3d 799, 805–809 (2014), held that lost resale profits were general damages under the particular distribution agreement; lost profits are not invariably consequential. The decision was 4–3, with Read, J., dissenting. In a tax engagement, income lost from the client's separate employment or business ordinarily presents a consequential-loss theory, not an amount the preparer promised to pay. [61]

For consequential contract damages, establish causation, reasonable certainty, and that the relevant liability was within the parties' contemplation when contracting. Foreseeability in the abstract is insufficient. *Buffalo Riverworks LLC v Schenne*, 221 AD3d 1463 (4th Dept 2023), applying Kenford and Ashland, rejected lost profits on contemplation and certainty grounds; learning of deadlines after contracting did not satisfy the formation-time inquiry.

This is a contract analysis. Malpractice separately requires the applicable duty, breach, proximate causation, and actual loss; pleading negligence does not automatically defeat a contractual limitation. [62]

"Incidental" is useful here as a description of reasonable ancillary costs of responding to an error, such as obtaining records, necessary delivery, or travel for corrective work. It is not an independent cause of action or a general right to an inconvenience allowance. UCC §2-715 expressly addresses a buyer's incidental and consequential damages, but Article 2 concerns transactions in goods under §2-102; ordinary tax-advice and preparation services do not acquire a damages remedy merely by borrowing that terminology. Analyze service-related expenses under the governing tort, contract, or statute. [63]

The table below compares the two labels side by side. It restates the discussion above and adds no new authority; the overview table that follows places both labels among the other loss items and remedies. [8, 61–63]

Feature	Consequential or special damages	Incidental damages
What the label describes	Additional losses arising from the claimant's circumstances or collateral transactions, rather than from the immediate loss of the promised performance.	Reasonable ancillary costs of responding to an error, such as obtaining records, necessary delivery, or travel for corrective work.
Legal status	A category of contract damages whose availability depends on the governing cause of action and agreement.	Not an independent cause of action and not a general right to an inconvenience allowance.
Typical tax-malpractice examples	Income lost from the client's separate employment or business; some corrective professional expenses (Rudolf classified corrective legal and expert expenses as consequential).	Record retrieval, travel, diagnostic work, or added payroll needed to correct an error. The same expense may also be consequential.
Proof required	Causation and reasonable certainty; for contract claims, that the liability was within the parties' contemplation when they contracted. Foreseeability in the abstract is insufficient (Kenford; Ashland; Buffalo Riverworks).	A reasonable expense causally connected to the error. Ordinary tax services have no separate UCC remedy for it.
Source of the terminology	Common-law classification that depends on the undertaking and the loss, not the label (Biotronik: lost profits are not invariably consequential). UCC §2-715 uses the term for goods.	UCC §2-715 uses the term for goods under §2-102. For services it is explanatory only; analyze under the governing tort, contract, or statute.
Effect of an exclusion clause	Read the clause for consequential, special, indirect, or lost-profit damages, alongside liability caps, guarantees, and the causes of action it covers.	Read the clause for incidental damages. An "incidental" label does not defeat an exclusion that reaches the loss or reduce the proof required.
Double counting	Overlaps with direct damages, tax-authority interest, credits, and corrective fees; count each loss once.	Compensates additional costs, not a second recovery for the same injury.
Where discussed	IV.A.2, 5–6, 12. [8, 61–62]	IV.A.2–6. [8, 61, 63]

The following comparison distinguishes damages classifications from particular loss items and separate remedies. The rows overlap: a corrective fee can be consequential damages, and a lost tax benefit can require analysis under

the particular contract or malpractice theory. A claim must not count the same loss twice. Rudolf expressly classified corrective legal and expert expenses as consequential; an "incidental" label does not defeat an exclusion or reduce the proof required. Examples are applications, not tax-malpractice holdings approving every item. [8, 61–72]

Category or remedy	Typical claimed loss	Principal qualification and discussion
Direct or general damages	Loss of the promised performance or its immediate value.	Contract-specific classification; identify the undertaking and actual loss. A refund is not automatic. IV.A.2, 11.
Consequential or special damages	Collateral lost earnings or business profits; some corrective expenses.	Causation and reasonably certain loss; contract claims also require contemplation at formation. Check exclusions. IV.A.2, 5–6, 12.
Incidental or mitigation expenses	Necessary record retrieval, travel, diagnostic work, or added payroll to correct an error.	Reasonable, causally connected expense; no separate UCC remedy for ordinary tax services. May also be consequential. IV.A.2–6.
Avoidable tax and lost tax benefits	Tax attributable to a missed available deduction, credit, or election.	Prove eligibility, required action, causation, and net uncompensated loss. Tax owed anyway is excluded. II.A.8; IV.A.3.
Penalties and tax-authority interest	Charges allegedly caused by deficient preparation or advice.	Separate each charge; consider causation, retained use of funds, abatements, and credits. IV.A.3.
Lost earnings and staff costs	Actual unpaid work time, displaced net profits, overtime, or replacement labor.	Identify the proper claimant and actual loss. Salary rate × hours or hypothetical bookings is insufficient alone. IV.A.5–6, 8.
Unpaid personal time and inconvenience	Searching for a successor, calls, paperwork, frustration.	No established general tax-malpractice hourly allowance. Distinguish consumer-law injury and proved earnings. IV.A.7–9; III.
Corrective professional fees	CPA or legal work repairing the underlying tax error.	Allocate reasonable correction work from routine compliance and prosecution of the damages claim. IV.A.3–4; IV.B.
Fees of pursuing the claim	Counsel's fees in the malpractice suit or arbitration.	Require an applicable agreement, statute, or other recognized fee rule; not automatically malpractice damages. IV.B–D; V; VII.
Consumer statutory damages	Qualifying deceptive-practice or false-advertising injury, potentially including lost personal time.	Independent statutory elements required. Apply the correct floor and enhancement rules; no duplicate recovery. IV.A.9; V.
Nominal damages	Recognition of a proven contract breach without substantial proven loss.	Do not replace the actual-injury requirement for malpractice or cure a duplicative contract claim. IV.A.11.
Preparation-fee refund or restitution	Return of a fee under a promise, damages theory, or supported restitutionary remedy.	Identify the legal basis, value received, and existing credits; not automatic forfeiture. IV.A.11.
Prejudgment interest	Compensation for delay in receiving the damages award.	Separate from tax-authority interest; apply the governing rate and loss dates. IV.A.10.

Category or remedy	Typical claimed loss	Principal qualification and discussion
Nonpecuniary and punitive damages	Emotional distress or punishment beyond compensation.	Neither follows from an ordinary tax error. Requires a separately sufficient legal basis; statutory enhancements are distinct. III.

The amount of the loss does not decide its category. Ancillary expenses compensate additional costs, not a second recovery for the same injury. In a services dispute, the UCC comparison is explanatory only; the applicable cause of action and agreement control. [8, 61, 63]

3 TAX LIABILITIES PENALTIES AND CORRECTIVE EXPENDITURES

Build the claim first around the actual financial loss: tax that competent advice would actually have avoided, a lost lawful tax benefit or refund, causally attributable penalties, and reasonable corrective expenses. Tax owed in any event is not converted into damages by an inaccurate return. Tax interest requires the separate retained-use and causation analysis below. Credits, refunds, abatements, and reimbursements must be reconciled against the particular loss they satisfy. *Cohen v Getzel* illustrates how a credit can eliminate the remaining asserted injury. [33, 57–60]

Tax liability as damages. The components should be separated. (1) Tax the taxpayer would have owed with competent preparation or advice is not damage caused by the error. (2) Tax that would have been avoided, or a lawful alternative that was lost, can be damage: *Serino v Lipper*, 123 AD3d 34 (1st Dept 2014), reinstated negligence, contract, and fiduciary-duty claims seeking recovery of gift taxes while holding that the out-of-pocket rule bars that recovery on fraud and negligent-misrepresentation theories; it did not decide the amount recoverable [33]. (3) Interest. The decisions distinguish avoidable losses caused by the professional's conduct from charges that reflect the taxpayer's retained use of the money; the cause of action matters but does not alone decide the question. In *Alpert v Shea Gould Climenko & Casey*, 160 AD2d 67 (1st Dept 1990), and *Shalam v KPMG LLP*, 43 AD3d 752 (1st Dept 2007) (fraud and conspiracy claims), back taxes and interest paid were not recoverable because that would leave the plaintiff better off than had the shelter never been purchased, interest being payment for the use of the money; Shalam distinguished negligence cases involving liabilities that would not have been incurred but for the professional's error [57]. *Jamie Towers Housing Co. v William B. Lucas, Inc.*, 296 AD2d 359 (1st Dept 2002), reinstated a claim and permitted proof of interest and late charges paid because of a managing agent's alleged failure to pay a known tax on time, subject to an offset for income actually earned on the funds [58]. In a legal-malpractice action, a trial court extended Alpert's reasoning, striking a demand for interest where the plaintiffs had chosen not to pay the taxes and had the use of the money, and distinguishing Jamie Towers on that basis (*Thies v Bryan Cave LLP*, 13 Misc 3d 1220[A] (Sup Ct, NY County 2006)) [59]. (4) Penalties require separate causation and damages analysis. In *Cohen v Getzel*, 205 AD3d 532 (1st Dept 2022), the parties did not dispute that the estimated-tax underpayment penalty and IRS interest were not recoverable (citing Alpert); the court described a separate failure-to-pay penalty as arguably recoverable but dismissed the claim because the accountants had credited that amount against their fees and the plaintiff never refuted that he sustained no damages [60]. The parties' concession is not a holding that all such penalties are unrecoverable, and credits or reimbursements can eliminate the remaining loss. (5) Correction and mitigation costs: see Rudolf and Baker in Part IV.B. The contract-specific contemplation analysis is addressed in Part IV.A.2.

A successor CPA's charge to identify and correct an error is materially different from charging the defendant for the client's own research hours. Obtain a task-specific invoice separating amendment work, reconstruction, tax-authority representation, routine annual compliance, and preparation of a damages claim. Reasonable corrective work is supported by analogy to Rudolf's allowance of legal and expert expenses incurred to repair malpractice; it is not an automatic reimbursement of every successor invoice. An original preparation-fee refund also requires a contractual or damages basis and allocation for value received, rather than automatic forfeiture. [8]

4 FINDING A REPLACEMENT PROFESSIONAL AND ANCILLARY EXPENSES

Reasonable expenditures to obtain corrective assistance may be presented as mitigation costs: for example, a paid diagnostic review needed to identify the correction, necessary record-retrieval charges, and reasonable transportation to an essential meeting. The claimant must establish why each expenditure was needed because of the error and why its amount was reasonable. A charge solely to investigate suing the preparer belongs in the litigation-cost analysis instead. These applications extend the corrective-expense rationale of Rudolf; that decision did not itself award tax-professional search costs. [8]

Maintain a dated search log identifying whom the client contacted, the purpose, the time required, any fee, and the result. A log substantiates effort and reasonableness but does not itself monetize the hours. Distinguish necessary efforts to locate a qualified replacement before a deadline from repeated opinion shopping after adequate help was available. Ordinary future preparation costs, unrelated travel, and avoidable duplication should not be added to the claim. Incremental childcare or substitute-worker expenses may merit inquiry if necessary to obtain correction, but no tax-specific New York appellate holding approving these items was identified in the research for this guide.

5 LOST WAGES LEAVE AND SELF EMPLOYED INCOME

An hourly employee who loses pay while attending a necessary corrective meeting has a stronger pecuniary claim than a salaried employee whose compensation is unchanged. Obtain the employer's confirmation, pay records, work schedule, and proof that the absence was reasonably necessary. This supports a potential claim, not an assurance of recovery: causation, remoteness, mitigation, contractual exclusions, and the nature of the activity remain decisive. Paid leave is not automatically lost wages. If leave was depleted, identify any vested cash-out value or other measurable loss under the employment policy; do not assume every vacation hour can be billed at salary rate.

For a self-employed client, identify specific engagements or billable work actually displaced, the probability of payment, and whether the work could be rescheduled. Use prior collections, bookings, contracts, cancellation communications, and business records to establish lost net earnings. A stated billing rate is not proof that every hour would have been sold and collected. Deduct expenses avoided and revenue later recovered, but do not deduct fixed overhead merely because it exists if it continued unchanged. Identify the correct claimant: a corporation's lost contract revenue is not automatically its shareholder's personal loss.

For example, ten hours spent contacting CPAs multiplied by a consultant's $300 advertised rate does not establish $3,000 in damages. A confirmed assignment that was necessarily cancelled and could not be rescheduled, with a documented $1,200 fee and $200 of avoided variable costs, supports investigation of a $1,000 lost-profit item. It still requires proof of the defendant's legal responsibility for that loss. This illustration applies the certainty and contemplation principles; it is not a tax-malpractice holding. [61–62]

6 INTERNAL PERSONNEL COSTS AND DIVERTED STAFF TIME

For a business claimant, separate additional payroll from allocation of payroll that would have been paid anyway. Overtime paid solely to reconstruct tax records, temporary assistance retained to complete necessary corrective work, and replacement personnel hired to keep ordinary operations running are identifiable expenditures to investigate. Obtain payroll records, invoices, dated task descriptions, and an explanation of necessity and reasonable cost. Their payment alone does not establish liability, their classification as incidental damages, or recoverability under the engagement's limitations. These are applications of the correction-cost and actual-loss principles, not identified New York appellate tax-malpractice holdings awarding internal payroll. [8; Part IV.A.2–4]

Existing salaried employees present a different proof problem. Multiplying hours diverted to correction by salary and benefits does not by itself establish an incremental expense or recoverable loss. Identify additional compensation actually paid, measurable loss of productive services, or particular revenue-producing work displaced, and supply the legal basis and evidence for the selected measure. Contemporaneous time records and payroll allocations can support that inquiry but cannot alone establish that the defendant caused the claimed economic loss. If the same work was completed later without additional cost or lost revenue, explain what uncompensated injury remains rather than assuming the allocated payroll is damage.

Avoid combining overlapping measures. If a temporary worker preserved the revenue that otherwise would have been lost, do not claim both that preserved revenue as lost profits and the worker's cost. Likewise, do not count the same diverted employee hours both as an internal labor charge and within lost-profit calculations without showing distinct losses. Segregate personnel time spent correcting tax compliance from time spent preparing the malpractice claim; the latter remains subject to the litigation-expense restrictions in Part IV.A.8.

7 HYPOTHETICAL OPPORTUNITIES UNPAID SELF HELP AND INCONVENIENCE

Statements such as "I could have found new clients," "I might have earned investment income," or "my time is worth $500 per hour" do not identify a realized financial loss. Identify the particular opportunity, its timing, the client's capacity to perform, the expected net return, and why the error prevented it. A chain of possible introductions, possible transactions, and possible profits ordinarily leaves too much speculation. An expert's calculation cannot supply a missing factual foundation. Buffalo Riverworks rejected a lost-profit claim where reliable measurement was lacking. [62]

Even genuine disruption does not supply its own measure of damages. Evening research, waiting on hold, organizing papers, inconvenience to family life, and frustration should not be transformed into wages simply by attaching an hourly rate. Likewise, performing some corrective tasks personally does not automatically entitle a client to the fee a CPA would have charged. The searches did not identify a New York appellate tax-malpractice decision establishing a replacement-cost measure for a taxpayer's unpaid self-help. Preserve the facts, but do not include that assumed amount in the core valuation without an independently supported theory. Part III governs emotional-distress claims; the consumer-law qualification appears below.

Dombrowski v Bulson, 19 NY3d 347 (2012), limits recovery in legal malpractice to pecuniary damages. That rule supplies context for distinguishing actual lost earnings from nonpecuniary inconvenience; it does not decide the value of a taxpayer's unpaid corrective time and should not be cited as categorically resolving that question for accountants. No New York appellate tax-malpractice authority establishing an hourly or replacement-cost award for that self-help was identified. [1]

8 LITIGATION TIME AND SEARCHES FOR LITIGATION COUNSEL

Goldberg v Mallinckrodt, Inc., 792 F2d 305 (2d Cir 1986), is a substantial obstacle to claims for personal litigation time. Applying New York fraud law, the majority rejected a physician's lost income from time spent defending malpractice suits as too remote. It also held that the third-party-litigation exception did not apply because Mallinckrodt was itself a party to the underlying suits, and read recoverable "expenses" as not encompassing the physician's personal time. Judge Lumbard concurred in part and dissented in part; his contrary treatment of the time claim is not the holding. This fraud case concerning defense of lawsuits is a weaker analogy for necessary, nonlitigation correction of a tax error, but shows why actual income loss alone does not establish recoverability. [64]

Separate client time spent obtaining tax correction from time spent selecting malpractice counsel, assisting counsel, reviewing pleadings, preparing discovery, attending depositions, or prosecuting the claim. Do not presume the latter is recoverable merely because the lawsuit would not exist without the alleged wrong. Nor does a fee-shifting provision automatically pay for the client's own time. Where tax-authority proceedings and corrective work overlap, allocate tasks and analyze the particular theory rather than treating all time as mitigation. Goldberg and the American Rule require independent attention. [64; Part IV.B–D]

9 THE CONSUMER PROTECTION QUALIFICATION FOR LOST PERSONAL TIME

In re General Motors LLC Ignition Switch Litigation, 339 F Supp 3d 262 (SDNY 2018), Nos. 14-MD-2543 and 14-MC-2543 (JMF), slip op at 84–86 (SDNY Sept. 12, 2018), distinguished lost earnings under New York fraud and implied-warranty claims from broader lost personal time under GBL §§349 and 350. Its discussion relied substantially on statutory minimum damages and consumer cases. This is persuasive federal district-court authority, not a Court of Appeals or Second Circuit holding and not a tax-preparation case. It supports investigating a separate statutory theory; it does not establish an hourly valuation formula or an automatic large award for hassle. [65]

Beslity v Manhattan Honda, 120 Misc 2d 848, 854–855 (App Term, 1st Dept 1983), arose under former GBL §350-d(3). At page 854, the court awarded the then-applicable $50 statutory amount after the consumer traveled to a

showroom because of deceptive advertising, although he did not prove the claimed economic bargain loss. At page 855, the court denied trebling and attorney's fees to the self-represented attorney. The statutory floor is not an hourly valuation of time. Current GBL §350-e(3) provides actual damages or $500, whichever is greater, while §349(h) provides actual damages or $50, whichever is greater; their elements and enhancement provisions must be applied separately. The decision supports distinguishing qualifying statutory injury from proof of substantial compensatory damages. [66]

For a tax client, identify a qualifying deceptive consumer practice or false advertisement, the resulting wasted activity, and why it caused injury. Negligent preparation, an individualized service disagreement, or disappointment alone does not establish the statutory claim. Preserve the misleading statement and the chronology. Plead qualifying lost-time injury separately from distress and from lost earnings; identify the statutory minimum and any supported actual damages without duplicating recovery. No controlling New York appellate tax-preparation decision establishing a substantial personal-time award was identified.

10 PREJUDGMENT INTEREST

Keep three different items separate: interest charged by the taxing authority; interest or financing costs claimed as substantive damage caused by the error; and statutory interest on the damages recovered. The retained-use analysis in Part IV.A.3 concerns the first category. It does not by itself determine whether a proven award bears prejudgment interest. Avoid compensating the same loss of use twice.

CPLR 5001(a) requires interest on sums awarded for breach of contract and for covered interference with property; in equitable actions, interest and its rate and starting date are discretionary. Under CPLR 5001(b), interest generally runs from the earliest ascertainable date the cause of action existed, but later-incurred losses bear interest from their own dates. For losses at various times, calculate interest item by item or use a reasonable intermediate date. Do not automatically apply the date of the original tax return to every later corrective expenditure. [68]

Prejudgment interest is also available in qualifying malpractice actions. *Barnett v Schwartz*, 47 AD3d 197, 208–209 (2d Dept 2007), directed interest on legal-malpractice damages from the dates the expenditures were actually made, or a reasonable intermediate date, rather than treating all losses as incurred at the initial transaction. *DiTondo v Meagher*, 85 AD3d 1385 (3d Dept 2011), likewise recognized preverdict interest in legal malpractice. These are legal-malpractice authorities, not tax-preparer decisions. Identify the nature of each compensable loss and its date in applying CPLR 5001 to the particular claim. [69–70]

CPLR 5004 generally sets interest at 9% per year unless another statute provides otherwise. Its 2% rule requires an action arising out of consumer debt in which a natural person is a defendant; it does not apply merely because the defendant preparer is an individual or the services were purchased by a consumer. A client's ordinary malpractice damages claim against a preparer is not ordinarily such a consumer-debt collection action. Address interest in the requested relief and damages schedule. Arbitration interest and interest on a federal judgment require separate attention to the governing agreement, procedural law, and applicable statutes. [71]

11 NOMINAL DAMAGES PREPARATION FEES AND RESTITUTION

Nominal damages may vindicate a proven breach of a valid contract even when substantial compensatory damage is not established. *Kronos, Inc. v AVX Corp.*, 81 NY2d 90 (1993), distinguishes this contract principle from tort claims requiring actual injury. Nominal damages do not supply the missing actual pecuniary injury for a malpractice claim or preserve a contract count that is merely duplicative of malpractice. They are not compensation for inconvenience or a substitute for proof of lost earnings. [67, 72]

Analyze the original preparation fee separately from successor correction costs. A refund may rest on an enforceable contractual refund promise, proven contract or malpractice damages, or a properly supported restitutionary remedy. Neither an error nor dissatisfaction automatically requires forfeiture of the entire original fee. Identify the undertaking, what work had value, what payment was wasted because of the breach, and whether partial repayment or an offset has already satisfied the same injury.

If rescission or unjust enrichment is asserted, identify its independent legal basis and the requirements of that remedy. A valid contract governing the same subject ordinarily limits resort to quasi-contract; rescission is not automatic for

every defective return. Do not present restitution as an additional award duplicating expectation damages, a contractual refund, or corrective expenses that already restore the same loss. Record the preparation fee as a separate claimed item with its legal theory, value received, and credits, rather than including the full fee by default.

12 CONTRACT EXCLUSIONS MITIGATION AND THE DAMAGES SCHEDULE

Read any exclusion of consequential, incidental, special, indirect, or lost-profit damages alongside liability caps, reimbursement promises, guarantees, and the causes of action it covers. A clause excluding consequential damages is not necessarily identical to one expressly excluding all lost profits. Biotronik requires attention to the actual agreement and loss. Do not assume an "incidental" label avoids a consequential-damages exclusion or that a negligence pleading defeats it. Assess enforceability and any public-policy challenge separately under Part VI; invalidating an exclusion does not create damages otherwise unavailable. [61]

Prepare a damages schedule with one line for each loss: claimant, date, activity or payment, amount, supporting record, causal explanation, legal theory, mitigation, and reimbursement or credit. Separate established expenses, supportable but disputed earnings, statutory remedies, and unsupported personal-time demands. Do not count both a replacement worker's cost and the same revenue that worker preserved, both the full value of a lost workday and each hour within it, or both a corrected refund and permanent loss of that refund. A lump-sum goodwill settlement may compensate inconvenience by agreement; that negotiating outcome does not establish a judicial entitlement.

B CORRECTIVE PROFESSIONAL FEES AND THE COST OF SUING

The first classification is functional. Legal or accounting work to amend a return, respond to an assessment, reconstruct basis, or repair a lost procedural opportunity may constitute damage caused by the original error. Work investigating and prosecuting the suit against the preparer ordinarily constitutes litigation expense. An invoice containing both must be allocated; the fact that counsel performed all the work does not put it all into the same recoverable category.

Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer, 8 NY3d 438, 443 (2007), recognizes reasonable litigation expenses incurred to avoid, minimize, or reduce the consequences of legal malpractice; the expenses there (post-trial motion and appeal fees and expert fees for the retrial) were incurred in the underlying action to correct the lawyer's error. Baker likewise recognizes corrective appellate fees as consequential damages. These decisions support an analogy for necessary tax-correction expenses, subject to proof of duty, causation, reasonableness, and the relevant accounting-malpractice rules. Neither decision addresses, or authorizes, shifting the cost of the malpractice lawsuit itself. Absent agreement, that limit rests on the American Rule, under which fees are incidents of litigation recoverable only by agreement, statute, or court rule (*Hooper Associates, Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491–492 (1989); *Flemming v Barnwell Nursing Home & Health Facilities, Inc.*, 15 NY3d 375 (2010)). *Chapel v Mitchell*, 84 NY2d 345 (1994), is the closest controlling analogy: a party prevailing on indemnification recovers fees for defending the underlying claim but not for prosecuting the indemnification claim. *Leach v Bailly*, 57 AD3d 1286 (3d Dept 2008), allowed fees paid to the negligent lawyer and for the underlying appeal but denied fees for later litigation unattributable to the malpractice. The searches did not surface a New York appellate decision awarding the fees of prosecuting a professional-malpractice suit as damages; an agreement can change the result (Part IV.C). [34–36] [7–8]

Separate charges for original preparation, corrective compliance, tax-contest representation, and the damages action. Obtain descriptions of the professional's tasks and evidence of the client's payment or liability. Deduct refunds and reimbursements where they satisfy the same loss. Test whether the expense would have been incurred even with correct preparation. Expert fees spent proving the damages action are not automatically recoverable merely because the statute authorizes attorney's fees; identify a separate basis and distinguish corrective expert work from litigation experts. The searches did not surface a New York decision on expert fees under §349(h); the federal analogue is *West Virginia University Hospitals, Inc. v Casey*, 499 US 83 (1991) (a statute authorizing "attorney's fees" does not reach expert fees without express authorization), while Rudolf treated expert fees for the retrial in the underlying action as consequential damages. [37]

C EXPRESS CONTRACTUAL ENTITLEMENT

Sage Systems, Inc. v Liss, 39 NY3d 27, 30–33 (2022), applies the American Rule and the demanding construction of indemnity provisions associated with *Hooper Associates, Ltd. v AGS Computers, Inc.*, 74 NY2d 487 (1989). A broadly worded indemnity does not necessarily authorize fees in a direct suit between the parties. In Sage Systems a defendant that had prevailed in the underlying partnership-dissolution suit sought its defense fees from the other partner's estate under a clause covering "any and all claims"; the Court of Appeals (Oct. 20, 2022) reversed the Appellate Division and held the clause not unmistakably clear enough to cover fees in an action between the parties. Hooper, 74 NY2d at 491–492, states the American Rule and the "unmistakably clear" standard. Identify unmistakably clear language covering that dispute. A promise to cover penalties, interest, or audit assistance is not automatically a promise to pay the lawyer suing for breach of that promise. That inference is drawn from Sage Systems and Hooper; neither decided it. [9]

Examine the actual contracting party, years covered, amendment provisions, signature or electronic assent, incorporation of additional terms, prevailing-party definition, covered claims, claim-notice requirements, fee caps, and dispute-resolution terms. Identify whether a provider's clause addresses only collection of unpaid preparation charges or also enforcement of all contractual obligations. A client's own retainer establishes the client's payment obligation to the client's lawyer, not the defendant's obligation to reimburse it. A fixed fee and a court-awarded reasonable fee are different amounts determined by different instruments. A retainer's prevailing-party clause can run in the client's favor: *Frankel v Vernon & Ginsburg, LLP*, 160 AD3d 528 (1st Dept 2018), held that a clause covering "any matters relating to the retention" applied to the client's malpractice claim and remanded to fix reasonable fees, rejecting the argument that it reached only contract claims. A preparer's engagement agreement should be read for any comparable prevailing-party or "relating to" language. [56]

D CONSUMER CONTRACT RECIPROCITY

GOL §5-327 applies to a "consumer contract": a written agreement between a creditor, seller, or lessor and a natural person under which the money, property, or services that are the subject of the transaction are primarily for personal, family, or household purposes. The text expressly includes services, and a "seller" includes one who "sells or provides" the subject of the transaction. When the provider has a contractual right to fees and expenses resulting from the consumer's breach, the statute implies reciprocal rights for the consumer following the provider's breach or a successful defense of the provider's contract action. Corresponding limitations also apply. Waiver of the section is expressly void. [10]

Personal return preparation is a plausible qualifying service, but confirm the named customer and purpose; a corporation's business-return contract presents a different question. The provision does not create fees when the agreement grants neither side fee rights. Nor does a third-party indemnity necessarily supply its trigger. If the contract gives the tax-service provider collection fees while expressly denying the consumer reciprocal recovery, §5-327 provides a stronger text-based challenge than generalized reliance on §349 public policy. Locate decisions applying it to comparable service contracts before pleading a particular scope of reciprocal recovery. The decisions that surfaced are few and none concerns tax preparation: *Jones v Hill's Heating & A.C., Inc.*, 67 AD3d 1432 (4th Dept 2009) (no §5-327 fees where recovery was on implied warranty rather than the contract) [38]; *DBCA, LLC v Cohen*, 62 Misc 3d 493 (Dist Ct, Nassau County 2018) (credit-card agreement; consumer who defeated the creditor's suit awarded fees) [39]. The First Department has separately refused to enforce one-sided fee clauses in lawyer retainers on mutuality and public-policy grounds without citing §5-327 (*Ween v Dow*, 35 AD3d 58 (1st Dept 2006); *Arfa v Zamir*, 55 AD3d 508 (1st Dept 2008)) [40]. Whether the Federal Arbitration Act affects §5-327 when the fee clause sits in an arbitration agreement is a targeted research point (*AT&T Mobility LLC v Concepcion*, 563 US 333 (2011); *Kindred Nursing Centers L.P. v Clark*, 581 US 246 (2017)); §5-327 regulates qualifying consumer contracts generally rather than arbitration clauses specifically.

V CONSUMER PROTECTION FEES

A SECTION 349 AND TAX SERVICES

GBL §349(h) permits reasonable fees to a prevailing plaintiff; the award is discretionary. It requires no contractual fee promise. As amended by the FAIR Business Practices Act (L 2025, ch 708, effective Feb. 17, 2026; confirm the chapter number against the session laws), §349(a) now declares "unfair, deceptive, or abusive" acts unlawful, but the private action in subdivision (h) remains limited to injury "by reason of any deceptive act or deceptive practice." Damages remain actual damages or $50, whichever is greater, with discretionary trebling up to $1,000 for willful or knowing violations, and the fee sentence is unchanged ("The court may award reasonable attorney's fees to a prevailing plaintiff"). A §349(h) claim is governed by the three-year period of CPLR 214(2). [32] Do not assume the broader Attorney General powers create a new private unfairness claim, or apply the amendments to conduct before February 17, 2026 without examining their effective-date provisions. [11]

Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., 37 NY3d 169 (2021), requires consumer-oriented conduct, material deception, and resulting injury. The Court (June 3, 2021) asked whether the challenged conduct is "directed to the consuming public," rejected a limit to personal or household use, and confirmed that "[p]rivate contract disputes, unique to the parties" remain outside the statute. Standardized services or representations may qualify; an isolated bespoke performance dispute may not. The plaintiff must connect actual injury to deception. The statute itself authorizes an action by "any person" injured, so a class is not required. The plaintiff in *Himmelstein* nonetheless lost, on the materiality element. A disclaimer defeats a §349 claim at the pleading stage only if it "utterly refutes" the allegations: a general disclaimer of liability is not enough, the disclaimer must address the alleged deception precisely, and it does not help where the overall impression remains misleading. The disclaimer there (no warranty of the "accuracy, reliability or currentness" of the materials) was held equivalent to disclaiming completeness. A disclaimer that keeps a representation from misleading bears on deception; a clause purporting to waive remedies after deception has occurred is a different question, addressed in Part VI. [12]

Carnegie v H&R Block, Inc., 269 AD2d 145 (1st Dept 2000), left a §349 claim concerning alleged deceptive refund-anticipation-loan practices standing while reversing class certification. It confirms that transactions involving H&R Block are not categorically outside consumer protection. It is not a holding that negligent preparation is deceptive or that every individual correction dispute is consumer-oriented. The same decision (Feb. 3, 2000) dismissed the plaintiff's fiduciary-duty claim, describing the relationship as an arm's-length, isolated transaction for tax preparation services and basic tax advice, which cuts against fiduciary theories against retail preparers. [14]

In a correction dispute, potentially relevant evidence includes the precise guarantee sold, standardized explanations about amended returns, instructions given to staff, and any correspondence stating that amendment was unlawful. First determine the correct tax treatment: a materially accurate refusal cannot become deception merely because another preparer took a different position. Then determine what the client did or failed to do because of the representation and what additional loss resulted. Corrective costs attributable only to the initial error cannot automatically be attributed to a later misleading explanation.

Courts have dismissed §349 claims against professionals where the challenged conduct was a private dispute about the particular engagement rather than a standardized representation to the public: *Payne v Rosenberg, Minc, Falkoff & Wolfe, LLP*, 228 AD3d 517 (1st Dept 2024) (law-firm website and retainer did not promise the specific collection work) [50]; *Jakes-Johnson v Gottlieb*, 200 AD3d 1679 (4th Dept 2021) (alleged overcharging was a private dispute) [51]; *Katsorhis v 718 W. Beech St, LLC*, 2025 NY Slip Op 00211 (2d Dept 2025) (private contract disputes unique to the parties) [52]. The deception must also have occurred in New York (*Goshen v Mutual Life Insurance Co. of New York*, 98 NY2d 314 (2002)) [53], which matters for out-of-state taxpayers or preparers. A violation of a statute enforceable only by public officials does not itself support a §349 claim (*Schlessinger v Valspar Corp.*, 21 NY3d 166 (2013)) [55]; Tax Law §32 requires registration of commercial tax preparers and regulates refund anticipation loans but contains no private right of action [54]. The searches did not surface a New York appellate decision other than *Carnegie* on a retail tax preparer's alleged deception under §349. The Attorney General's 2022 settlement with Intuit ($141 million) was an enforcement matter, not a private-action holding.

B OTHER PROVISIONS AND THE SIZE OF AN AWARD

GBL §350-e(3) separately permits discretionary prevailing-plaintiff fees for actionable false advertising under §§350 and 350-a. This may matter if a misleading advertisement or guarantee caused the transaction and injury. It is not a substitute for identifying the advertisement and proving the elements. Its monetary terms differ from §349(h): actual damages or $500, with discretionary trebling up to $10,000 for willful or knowing violations. Tax-preparer regulatory requirements may inform the factual inquiry, but do not assume that a regulatory violation itself supplies a private fee award. [15]

Tomassini v FCA US LLC, No. 21-2785-cv (2d Cir Feb. 24, 2023) (summary order), affirmed $125,882.78 in fees following a $2,000 individual judgment under a Rule 68 offer. The court interpreted the offer in light of §349 and rejected a rigid proportionality ceiling, while examining reasonableness and the litigation's history. It is nonprecedential and involved a specific offer and prolonged proceedings; it is not a forecast that a modest tax claim will support comparable fees. The offer was accepted in 2020 in a putative class action filed in 2014 in which class certification had been denied in 2018, and it covered fees for the plaintiff's individual claims only; the fee request was $151,525.56. [16]

For case valuation, distinguish legal availability from likelihood of prevailing, reasonable amount, and collectibility. Maintain task-specific time records even under a fixed-fee engagement; separate correction work, consumer claims, unrelated claims, and fee-application work. Address the degree of success and any overlap without double recovery. A settlement should expressly resolve or reserve fees; a payment of damages does not necessarily resolve the fee question, and an inclusive settlement cannot later be treated as excluding fees simply because counsel's time exceeded expectations.

VI EXPRESS EXCLUSIONS AND WAIVER

For engagement-letter conditions and damages limits, also see Island Consolidated, 2026 NY Slip Op 01308 (1st Dept Mar. 10, 2026), discussed in Part II.A.1. It preserves factual defenses based on course of dealing; it does not hold every preparer limitation enforceable. [89]

A CONSTRUCTION BEFORE INVALIDATION

Begin with the entire agreement. Silence about fees is not an express waiver. A clause allocating each party's own fees may govern only ordinary contract disputes, or may expressly extend to statutory claims and arbitration. An exception for remedies available under applicable law supports preserving statutory authority, but ambiguous savings language should not be treated as a guaranteed cure. A limitation on consequential damages may implicate corrective fees differently from a prohibition on litigation fees. Record these as separate interpretive questions.

An express prospective waiver of §349 fees presents the difficult question. Section 349 does not state that all waivers are void. The plaintiff can argue that eliminating the fee incentive defeats the practical enforcement mechanism for small consumer injuries. The defense can respond that the award is discretionary, the legislature omitted an anti-waiver clause, and ordinary contract allocation remains valid. Discretionary award authority and freedom to waive that authority are distinct issues: neither side wins merely by emphasizing the word "may." No square controlling New York appellate resolution of this precise blanket-waiver question was located in this research. Authority by analogy: *Schiferle v Capital Fence Co.*, 155 AD3d 122 (4th Dept 2017), upheld a waiver of Labor Law §198 fees made after the claim arose, between brothers, but distinguished waivers "executed prospectively by individuals with no real ability to insist upon their rights" in adhesive agreements (id. at 132–133) [42]; *Williams v Comprehensive Consulting Group* (ED NY May 3, 2011) (magistrate judge's report) severed a no-fee clause in an arbitration agreement as invalid under Title VII; and *Tsadilas v Providian National Bank*, 13 AD3d 190 (1st Dept 2004), enforced a class waiver, calling the fee-based challenge speculative and noting that the Attorney General can still enforce §349, which favors the defense [43]. None decides a prospective waiver of §349(h) fees.

B NEW YORK CONTRACT DEFENSES

Under *Gillman v Chase Manhattan Bank, N.A.*, 73 NY2d 1, 10–12 (1988), unconscionability generally involves procedural and substantive unfairness assessed when the agreement was made. Examine prominence, intelligibility, bargaining power, available alternatives, pressure, and the substantive effect of the clause. A standard form or take-it-or-leave-it presentation alone does not establish invalidity. The argument becomes more concrete where the consumer loses statutory enforcement remedies while the provider retains broad enforcement rights. Apply §5-327 first if its specific conditions are met. [17]

For cost-shifting terms in arbitration agreements, the Court of Appeals applies a case-by-case inquiry into the litigant's ability to pay, the expected cost differential between arbitration and court, and whether that differential is substantial enough to deter the claim (*Brady v Williams Capital Group, L.P.*, 14 NY3d 459 (2010) (remitting for a hearing on ability to pay)) [44]. That test addresses cost-splitting rather than elimination of statutory fee-shifting, but it is the New York framework most closely related to an effective-vindication challenge in state court.

Distinguish a pre-dispute limitation imposed as a condition of receiving routine services from a negotiated release of an accrued dispute for consideration. The latter presents different settlement policies and construction issues. Obtain any release associated with the preparation-fee refund; do not infer a release merely from payment, and do not assume a refund leaves every claim intact. Likewise, severability may preserve the arbitration agreement even if a fee limitation is invalid. A successful challenge to one clause does not necessarily return the dispute to court.

C SECOND CIRCUIT AND SUPREME COURT FRAMEWORK

Ragone v Atlantic Video at Manhattan Center, 595 F3d 115, 121–126 (2d Cir 2010), enforced an employment arbitration agreement after defendants relinquished a 90-day demand deadline and a prevailing-party fee provision. Its holding supports curing or severing provisions rather than automatically invalidating arbitration. Its caution is relevant by analogy: without the waivers it was "at least possible" the terms were incompatible with the plaintiff's ability to pursue her Title VII claims in arbitration, and it was "not at all clear" the result would be the same had defendants enforced the agreement in full, but it did not adjudicate a §349 fee waiver. Its discussion of economically infeasible class claims must be read in light of later Supreme Court law; it drew on the Second Circuit's *American Express* merchants decisions, the line *Italian Colors* rejected. [18]

American Express Co. v Italian Colors Restaurant, 570 US 228, 235–239 (2013), enforced individual arbitration despite the cost of proving the federal antitrust claim. It distinguishes an agreement eliminating a right to pursue a statutory remedy from the practical expense of proving a claim. Thus "my fee exceeds the likely damages" is not, by itself, a basis to avoid arbitration. The Court did suggest, in dictum, that the doctrine would perhaps cover filing and administrative fees attached to arbitration that are so high as to make access to the forum impracticable (570 US at 236). That bears on cost-shifting terms, not on the expense of proving a claim. The effective-vindication doctrine concerns federal statutory rights; it is not a free-standing rule that automatically invalidates every waiver of a New York statutory remedy. State-law arguments need their own contract/public-policy foundation consistent with the FAA. [19]

Gingras v Think Finance, Inc., 922 F3d 112, 126–128 (2d Cir 2019), held a tribal-law-only arbitration scheme both unenforceable and unconscionable because it appeared "wholly to foreclose" borrowers from vindicating rights granted by federal and state law. *Cedeno v Sasson*, No. 21-2891, 100 F4th 386 (2d Cir May 1, 2024), held an arbitration provision unenforceable because it barred plan-wide remedies available under ERISA, which the court described as prospective waivers of substantive statutory rights; a nonseverability clause then voided the entire arbitration procedure, and Judge Menashi dissented. Rehearing en banc was denied on July 9, 2024, and certiorari was denied on November 4, 2024 (No. 24-392); the courts of appeals remain divided on arbitrating ERISA plan-wide claims. These authorities support scrutiny of agreements that remove substantive remedies, but neither resolves a stand-alone §349 fee exclusion. Preserve the distinction between categorical displacement of governing law, elimination of a federal remedy, and waiver of one discretionary state-law remedy. [21–22]

Before relying on the newest arbitration cases in a filing, check rehearing, mandate, certiorari, and later treatment. Public-source review is not a substitute for a current citator and docket review. Also determine who decides the

challenge: formation, delegation, arbitrability, and the merits of a remedy restriction are different issues. A party opposing a delegation clause should direct the challenge to that clause where required, rather than assume that a merits objection to the overall contract necessarily belongs before the court. See *Matter of Monarch Consulting, Inc. v National Union Fire Insurance Co. of Pittsburgh, PA*, 26 NY3d 659 (2016) (delegation clause enforced where clear and unmistakable and not specifically challenged) [47]. On fee advancement during a pending arbitration, the Second Circuit has held that allocation of provider fees is for the arbitrator or provider and that a court has no authority under FAA §4 to order a party to advance them (*Frazier v X Corp.*, No. 24-1948 (2d Cir Sept. 2, 2025)) [48].

D IMPORTANT OUT OF STATE ARGUMENTS

Delta Funding Corp. v Harris, 189 NJ 28, 44–45, 912 A2d 104 (2006), is particularly useful. Answering a question certified by the Third Circuit, the New Jersey Supreme Court (Aug. 9, 2006) noted that fees under TILA and the Consumer Fraud Act are mandatory but that RESPA's fee remedy is discretionary. It held that, to the extent the each-side-bears-its-own-fees clause would bar discretionary RESPA fees, it is unconscionable, reasoning that the possibility of a fee award encourages pursuit of the statute's protections. It left interpretation of the ambiguous provisions to the arbitrator and explained that if the arbitrator permits cost-shifting, the unconscionable cost-shifting provision must be severed, and that other provisions read against the consumer could be severed under the agreement's severability clause; the majority upheld the class waiver. This directly answers the defense argument that discretionary necessarily means freely waivable. It remains a New Jersey contract-law decision involving different statutes, not a binding construction of §349; its subsequent treatment was not checked; and its pre-*Italian Colors* discussion must not be used to invalidate arbitration simply because an individual claim is uneconomic. [24]

Venture Cotton Cooperative v Freeman, 435 SW3d 222, 229–231 (Tex 2014), is useful on severability and statutory specificity. The court held that the Texas DTPA remedies at issue could be contractually waived, but that an implied waiver (a rule limiting awards to contract damages) was ineffective because the DTPA's waiver formalities were not met. It concluded that the objectionable limitation could be severed rather than defeat arbitration, because the agreement's essential purpose was speedy and efficient dispute resolution, and it held the one-sided fee provision not unconscionable per se and not a ground to invalidate the agreement; it remanded the farmers' remaining unconscionability arguments. Later Texas treatment was not checked. The contrast matters: §349 has no equivalent general express waiver formalities, while GOL §5-327 expressly prohibits waiver. [25]

The most supportable New York argument is therefore targeted: identify the statute and its enforcement policy, establish the consumer contract and its actual effect, show why this particular prospective restriction is impermissible, and request preservation of the statutory remedy, with severance if appropriate. Avoid arguing that every consumer-protection right everywhere is nonwaivable. That formulation overlooks both statutory differences and the FAA.

VII ARBITRATION PROCEDURE AND PROOF

AAA Consumer Arbitration Rule R-46(a), effective May 1, 2025, authorizes remedies available in court, including attorney's fees and costs, under applicable law. Rule R-46 is titled "Scope of Award"; R-46(a) authorizes "any remedy, relief, or outcome that the parties could have received in court," including attorney's fees and costs "in accordance with applicable law," while R-46(c) separately provides that an arbitrator may award administrative fees, arbitrator compensation, or expenses to a business only as required by applicable law or on a finding that a claim against the business was filed for harassment or is patently frivolous; that provision concerns the costs assessed under Rules R-52 to R-54, not the attorney-fee authority in R-46(a). This supplies an important contractual/procedural starting point if those rules are incorporated. It does not dispense with the substantive basis for fees or automatically answer a conflict with an express exclusion. CPLR 7513's default treatment of arbitral expenses does not itself create a general attorney-fee entitlement, and it excludes attorney's fees from the arbitrator's expenses. In New York arbitration, fees are awardable where the agreement or a statute authorizes them or all parties requested them during the arbitration; an arbitrator's addressing the issue does not imply a mutual request, and a boilerplate pleading request that was not pursued in the arbitration was insufficient on that record (*Matza v Oshman, Helfenstein & Matza*, 33 AD3d 493 (1st Dept 2006)), while a fee clause combined with incorporated forum rules authorizing fee awards

can supply the authority (*New York Merchants Protective Co., Inc. v RW Adart Poly*, 108 AD3d 554 (2d Dept 2013)). An unauthorized fee award exceeds the arbitrator's powers. [45–46] Read the arbitration clause, incorporated rules, applicable law, and any priority-of-terms provision together. [26–27]

Raise the fee basis expressly in the demand and later submissions. Request a reasoned decision identifying the successful claims, the legal source of fees, any ruling on the exclusion, and the amount. Do not postpone the issue until confirmation of the award. Judicial review of arbitration is limited; ordinary disagreement with the arbitrator's legal reasoning is not a reliable mechanism for obtaining a second decision on fees. After a stay under FAA §3, the federal court that stayed the case may confirm or vacate the award without an independent jurisdictional basis (*Jules v Andre Balazs Properties*, 608 US 200 (2026)), which bears on where enforcement will occur. [49] Obtain the applicable rules version and research any delegation and award-review issues before selecting the forum.

Proof should connect each requested dollar to a recoverable category. For a fee-shifting application, submit the agreement or statute, engagement terms relevant to the request, billing records, task descriptions, reasonable-rate support, allocation, and results. For corrective fees as damages, prove the original breach and why the work was necessary to repair it. For a consumer claim, preserve the actual advertisement, statement, or omission and the transaction history showing resulting injury. For an express waiver challenge, preserve the complete assent process and the clause as displayed, not merely an isolated screenshot of its words.

VIII EVALUATION FRAMEWORK AND OPEN QUESTIONS

In evaluating a tax-malpractice dispute, begin with documented financial losses and analyze any emotional-distress tort or consumer-protection claim separately. Inconsistent correction advice may justify further inquiry, but does not establish deception without examining the underlying tax treatment, the representation, and the resulting injury. Where more than one provider is involved, assess each party's contract, conduct, causation, forum, and deadlines independently; a conclusion about one provider's agreement cannot be transferred to another.

A first document review should gather the complete agreements for the affected years, any guarantee and refund/release terms, the written correction correspondence, and itemized corrective invoices. Add the minimum original and amended return materials needed to assess the asserted error. Only if a plausible noneconomic theory emerges should the review expand to sensitive treatment records. This sequence avoids extensive collection that does not resolve a threshold legal issue.

Open research questions include: (1) whether any New York appellate decision addresses an express prospective §349/§350 fee waiver, distinguishing fee shifting from arbitration costs; (2) how GOL §5-327 applies to personal professional-service contracts and collection-only clauses; (3) whether any tax or accounting case recognizes or rejects noneconomic damages under a genuinely independent tort or consumer statute; (4) contract-specific delegation, severability, and choice-of-law analysis; (5) fee-award decisions involving modest individual recoveries, partial success, and settlements; (6) whether a non-CPA seasonal preparer is a "professional" under CPLR 214(6); (7) whether the FAA preempts GOL §5-327 when the fee clause sits in an arbitration agreement; (8) the enacted text of L 2025, ch 708 and any chapter amendment; and (9) how the tax-damages cases discussed in Part IV.A apply to particular facts. Part X lists authorities whose texts or pinpoint pages have not been verified. These are substantive open questions, not reasons to presume favorable answers.

In deciding whether to pursue a claim, assess likely recoverable damages without assuming emotional compensation, separately estimate any supportable fee entitlement, and account for the cost of proving both liability and the fee theory. A strong statutory claim can make modest damages litigable. A speculative statutory label or an unresolved waiver challenge cannot safely substitute for that claim. If a lawyer declines the matter, the nonengagement communication should address the decision and any known deadline concern without stating that all possible remedies have conclusively been exhausted.

IX TABLE OF AUTHORITIES AND SOURCE REGISTER

Authorities below are keyed to bracketed references in the text. Links lead to statutes, rules, or reproduced judicial opinions. Reporter citations and key passages were re-checked against public-source texts on October 21, 2026 (Part X lists items that could not be verified); comprehensive subsequent-treatment review through a citator remains necessary. Section references replace page references so later edits do not make this register inaccurate.

[1] *Dombrowski v Bulson*, 19 NY3d 347 (2012). Sections I, III A, III D. Read authority

[2] *Davidovici v Fritzson*, 49 AD3d 488 (2d Dept 2008). Section III A. Read authority

[3] *Taggart v Costabile*, 131 AD3d 243 (2d Dept 2015). Section III B. Read authority

[4] *SanMiguel v Grimaldi*, 2025 NY Slip Op 05780 (Ct App Oct. 21, 2025) (Singas, J.; official NY3d cite not located). Section III B. Read authority

[5] *Howell v New York Post Co.*, 81 NY2d 115 (1993). Section III C. Link is a third-party mirror. Read authority

[6] *Wehringer v Standard Security Life Insurance Co. of New York*, 57 NY2d 757 (1982), as applied in *Bettan v GEICO General Insurance Co.*, 296 AD2d 469 (2d Dept 2002). Section III C. Text of Wehringer not retrieved. Read authority

[7] *Baker v Dorfman*, 239 F3d 415 (2d Cir 2000). Sections III D, IV A–B. Read authority

[8] *Rudolf v Shayne, Dachs, Stanisci, Corker & Sauer*, 8 NY3d 438 (2007). Section IV A–B. Read authority

[9] *Sage Systems, Inc. v Liss*, 39 NY3d 27 (2022), applying *Hooper Associates, Ltd. v AGS Computers, Inc.*, 74 NY2d 487 (1989). Section IV C. Read authority

[10] General Obligations Law §5-327. Sections IV D, VI. Read authority

[11] General Business Law §349. Sections V A, VI A. As amended by L 2025, ch 708, eff. Feb. 17, 2026 (chapter number from secondary sources). Read authority

[12] *Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co.*, 37 NY3d 169 (2021). Section V A. Read authority

[13] *Hobish v AXA Equitable Life Insurance Co.*, 43 NY3d 442 (2025). Section III F. Read authority

[14] *Carnegie v H&R Block, Inc.*, 269 AD2d 145 (1st Dept Feb. 3, 2000) (reporter cite not confirmed). Section V A. Read authority

[15] General Business Law §350-e(3). Section V B. Current text confirmed (last revised 2014). Read authority

[16] *Tomassini v FCA US LLC*, No. 21-2785-cv (2d Cir Feb. 24, 2023) (summary order) (the WL cite originally listed, 2023 WL 2194016, could not be confirmed). Section V B. Read authority

[17] *Gillman v Chase Manhattan Bank, N.A.*, 73 NY2d 1 (1988). Section VI B. Read authority

[18] *Ragone v Atlantic Video at Manhattan Center*, 595 F3d 115 (2d Cir 2010). Section VI C. Read authority

[19] *American Express Co. v Italian Colors Restaurant*, 570 US 228 (2013). Section VI C. Read authority

[20] *Kahn v Morse & Mowbray*, 121 Nev 464, 117 P3d 227 (2005). Section III E. Read authority

[21] *Gingras v Think Finance, Inc.*, 922 F3d 112 (2d Cir 2019). Section VI C. Read authority

[22] *Cedeno v Sasson*, No. 21-2891, 100 F4th 386 (2d Cir May 1, 2024), reh'g en banc denied (July 9, 2024), cert denied, No. 24-392 (Nov. 4, 2024). Section VI C. Read authority

[23] *Gunn v Minton*, 568 US 251 (2013). Section II. Pinpoint pages not verified. Read authority

[24] *Delta Funding Corp. v Harris*, 189 NJ 28, 912 A2d 104 (2006). Section VI D. Read authority

[25] *Venture Cotton Cooperative v Freeman*, 435 SW3d 222 (Tex 2014). Section VI D. Read authority

[26] AAA Consumer Arbitration Rules, effective May 1, 2025, R-46 (Scope of Award). Section VII. Read authority

[27] CPLR 7513. Section VII. Read authority

[28] *Ackerman v Price Waterhouse*, 84 NY2d 535 (1994). Section II. Read authority

[29] *Williamson v PricewaterhouseCoopers LLP*, 9 NY3d 1 (2007). Section II. Read authority

[30] *Chase Scientific Research, Inc. v NIA Group, Inc.*, 96 NY2d 20 (2001). Section II. Read authority

[31] *Credit Alliance Corp. v Arthur Andersen & Co.*, 65 NY2d 536 (1985); *Parrott v Coopers & Lybrand, L.L.P.*, 95 NY2d 479 (2000). Section II. Link is to *Parrott*; *Credit Alliance* text not retrieved. Read authority

[32] CPLR 214. Sections II, V A. Read authority

[33] *Serino v Lipper*, 123 AD3d 34 (1st Dept 2014). Section IV A. Read authority

[34] *Flemming v Barnwell Nursing Home & Health Facilities, Inc.*, 15 NY3d 375 (2010). Section IV B. Read authority

[35] *Chapel v Mitchell*, 84 NY2d 345 (1994). Section IV B. Read authority

[36] *Leach v Bailly*, 57 AD3d 1286 (3d Dept 2008). Section IV B. Read authority

[37] *West Virginia University Hospitals, Inc. v Casey*, 499 US 83 (1991). Section IV B. Read authority

[38] *Jones v Hill's Heating & A.C., Inc.*, 67 AD3d 1432 (4th Dept 2009). Section IV D. Read authority

[39] *DBCA, LLC v Cohen*, 62 Misc 3d 493 (Dist Ct, Nassau County 2018), 2018 NY Slip Op 28372. Section IV D. Read authority

[40] *Ween v Dow*, 35 AD3d 58 (1st Dept 2006); *Arfa v Zamir*, 55 AD3d 508 (1st Dept 2008). Section IV D. Link is to *Ween*. Read authority

[41] *Brown v New York Design Center, Inc.*, 215 AD3d 1 (1st Dept 2023). Section III B. Read authority

[42] *Schiferle v Capital Fence Co.*, 155 AD3d 122 (4th Dept 2017). Section VI A. Read authority

[43] *Tsadilas v Providian National Bank*, 13 AD3d 190 (1st Dept 2004). Section VI A. Read authority

[44] *Brady v Williams Capital Group, L.P.*, 14 NY3d 459 (2010). Section VI B. Read authority

[45] *Matza v Oshman, Helfenstein & Matza*, 33 AD3d 493 (1st Dept 2006). Section VII. Read authority

[46] *New York Merchants Protective Co., Inc. v RW Adart Poly*, 108 AD3d 554 (2d Dept 2013). Section VII. Read authority

[47] *Matter of Monarch Consulting, Inc. v National Union Fire Insurance Co. of Pittsburgh, PA*, 26 NY3d 659 (2016). Section VI C. Read authority

[48] *Frazier v X Corp.*, No. 24-1948 (2d Cir Sept. 2, 2025). Section VI C. (Lynch, J.) Read authority

[49] *Jules v Andre Balazs Properties*, 608 US 200 (2026) (No. 25-83, decided May 14, 2026). Section VII. Read authority

[50] *Payne v Rosenberg, Minc, Falkoff & Wolfe, LLP*, 228 AD3d 517 (1st Dept 2024). Section V A. Read authority

[51] *Jakes-Johnson v Gottlieb*, 200 AD3d 1679 (4th Dept 2021). Section V A. Read authority

[52] *Katsorhis v 718 W. Beech St, LLC*, 2025 NY Slip Op 00211 (2d Dept 2025). Section V A. Link is a secondary-source summary. Read authority

[53] *Goshen v Mutual Life Insurance Co. of New York*, 98 NY2d 314 (2002). Section V A. Read authority

[54] Tax Law §32. Section V A. Read authority

[55] *Schlessinger v Valspar Corp.*, 21 NY3d 166 (2013). Section V A. No private right of action under GBL §395-a; §349 does not grant a private remedy for every improper or illegal business practice. Read authority

[56] *Frankel v Vernon & Ginsburg, LLP*, 160 AD3d 528 (1st Dept 2018). Section IV C. Read authority

[57] *Shalam v KPMG LLP*, 43 AD3d 752 (1st Dept 2007); *Alpert v Shea Gould Climenko & Casey*, 160 AD2d 67 (1st Dept 1990). Section IV A.3. Link is to *Shalam*; *Alpert* opinion not retrieved. Read authority

[58] *Jamie Towers Housing Co. v William B. Lucas, Inc.*, 296 AD2d 359 (1st Dept 2002). Section IV A.3. Link is a partial excerpt. Read authority

[59] *Thies v Bryan Cave LLP*, 13 Misc 3d 1220[A], 2006 NY Slip Op 51920[U] (Sup Ct, NY County Mar. 14, 2006). Section IV A.3. The Appellate Division decision at 35 AD3d 252 affirmed only the stay pending arbitration. Read authority

[60] *Cohen v Getzel*, 205 AD3d 532 (1st Dept 2022). Section IV A.3. Read authority

[61] Biotronik A.G. v Conor Medsystems Ireland, Ltd., 22 NY3d 799, 805–809 (2014). Part IV.A. Classification of general and consequential damages. Read authority

[62] Buffalo Riverworks LLC v Schenne, 221 AD3d 1463 (4th Dept 2023), 2023 NY Slip Op 05823. Part IV.A. Applies Kenford I, 67 NY2d 257, 261–262 (1986), Kenford II, 73 NY2d 312, 319–320 (1989), and Ashland Mgt. v Janien, 82 NY2d 395, 403–404 (1993). Read authority

[63] UCC §§2-102 and 2-715. Part IV.A. Goods scope and incidental/consequential terminology. Read authority

[64] Goldberg v Mallinckrodt, Inc., 792 F2d 305 (2d Cir 1986). Part IV.A. Majority opinion on personal litigation time; dissent distinguished. Read authority

[65] In re General Motors LLC Ignition Switch Litigation, 339 F Supp 3d 262 (SDNY 2018), Nos. 14-MD-2543 and 14-MC-2543 (JMF), slip op at 84–86 (SDNY Sept. 12, 2018). Part IV.A. Opinion reproduced on the Groman member-case docket, No. 14-cv-2458, Document 261. Read authority

[66] Beslity v Manhattan Honda, 120 Misc 2d 848, 854–855 (App Term, 1st Dept 1983). Part IV.A. Former GBL §350-d(3); historical statutory damages for deceptive advertising. Opinion reproduced by CaseMine. Read authority

[67] Gordon v Vladislav Tsirkin CPA & Co., LLC, 229 AD3d 450 (2d Dept 2024). Part IV.A.1. Duplicative contract and accounting-malpractice claims. Read authority

[68] CPLR 5001. Part IV.A.10. Availability and computation of prejudgment interest. Read authority

[69] Barnett v Schwartz, 47 AD3d 197, 208–209 (2d Dept 2007). Part IV.A.10. Interest on malpractice losses as incurred. Read authority

[70] DiTondo v Meagher, 85 AD3d 1385 (3d Dept 2011). Part IV.A.10. Preverdict interest in legal malpractice. Read authority

[71] CPLR 5004. Part IV.A.10. General 9% rate and qualifying consumer-debt exception. Read authority

[72] Kronos, Inc. v AVX Corp., 81 NY2d 90 (1993). Part IV.A.11. Nominal contract damages and actual injury in tort. Read authority

[73] Berg v Eisner LLP, 94 AD3d 496 (1st Dept 2012). Part II.A. Missed election, scope, and expert proof. Read authority

[74] Menard M. Gertler, M.D., P.C. v Sol Masch & Co., 40 AD3d 282 (1st Dept 2007). Part II.A. Expert evidence and speculative alternative conduct. Read authority

[75] NFGTV, Inc. v Lutz & Carr Certified Public Accountants, LLP, 79 Misc 3d 1241(A), 2023 NY Slip Op 50849(U) (Sup Ct, NY County 2023). Part II.A. Undertaken election filing. Read authority Appeal withdrawn, 2024 NY Slip Op 63560(U) (Mar. 7, 2024); not a merits affirmance. The order itself could not be located, so the manner of withdrawal is unconfirmed. Read motion decision

[76] Island Consolidated v Grassi & Co., Certified Public Accountants PC, 239 AD3d 443 (1st Dept 2025). Part II.A. Additional services and scope of contractual preconditions. Read authority

[77] Treasury Regulation §1.6694-1(e). Part II.A. Reliance on supplied information and reasonable inquiry for penalty purposes. Read authority

[78] Treasury Regulation §1.6695-2. Part II.A. Special preparer due diligence for covered benefits and filing status. Read authority

[79] 31 CFR §10.35. Part II.A. Competence appropriate to the matter. Read authority

[80] 31 CFR §10.37. Part II.A. Written tax advice and scope-sensitive review. Read authority

[81] 31 CFR §§10.21, 10.22, and 10.34. Part II.A. Known errors, diligence, and return standards; applicability must be established. Read authority

[82] IRS Office of Professional Responsibility, Drawing the Line: Tax Return Preparation vs. Practice, Issue 2026-5 (Feb. 17, 2026). Part II.A. Jurisdictional distinction and AFSP consent. Read authority

[83] 20 NYCRR §§2600-1.1, 2600-3.2, and 2600-4.3. Part II.A. Applicability, best practices, and duties. Read authority

[84] AICPA, Statements on Standards for Tax Services resource page. Membership applicability; specific provisions are cited at [91]. Read authority

[85] IRC §6694. Part II.A. Limits on unreasonable return positions; not an exhaustive tax-minimization mandate. Read authority

[86] Deane v Brodman, 192 AD3d 577 (1st Dept 2021). Tax-preparation reliance and absence of expert-supported departure. Read authority

[87] 1650 Broadway Associates, Inc. v Sturm, 228 AD3d 1 (1st Dept 2024). Apparent fraud and reasonable care in a limited engagement. Read authority

[88] Channel Fabrics, Inc. v Skwiersky, Alpert & Bressler LLP, 222 AD3d 512 (1st Dept 2023). Review scope and conclusory departure allegations. Read authority

[89] Island Consolidated v Grassi & Co., Certified Public Accountants PC, 2026 NY Slip Op 01308 (1st Dept Mar. 10, 2026). Course of dealing, contractual defenses, and continuous representation. Official AD3d citation not confirmed. Read authority

[90] Tax Law §32(a)(14). Statutory preparer definition and exclusions. Read authority

[91] AICPA, Statements on Standards for Tax Services (effective Jan. 1, 2024), Nos. 1 and 2, provisions cited in II.A.6. AICPA-authored PDF reproduced on a practitioner website; text examined. Read authority

[92] IRC §§219(f)(3) and 223(d)(4)(B). Contribution timing for IRA and HSA. Read authority HSA provision

[93] IRC §401(b), as amended by SECURE Act §201 (retroactive adoption, paragraph (2)) and SECURE 2.0 §317 (first-year deferrals of an individual who owns an unincorporated business and is its only employee; plan years beginning after Dec. 29, 2022). Distinguish employer funding. The Code text of §401(b) and the paragraph number of the §317 rule were not retrieved; the rules were confirmed in IRS Publication 560 (draft) and practitioner summaries. Read authority

[94] IRS Instructions for Form 4562, sections on electing §179 and electing out of special depreciation. Year-specific instructions and relief must be checked. Read authority

[95] Treasury Regulations §§301.9100-2 and 301.9100-3. Automatic and discretionary election relief. Read authority Discretionary relief

[96] IRS Topic 429, Traders in Securities. Ordinary and new-taxpayer §475(f) deadlines. Read authority

[97] Vines v Commissioner, 126 TC 279 (2006). Discretionary relief for a late §475(f) election on the facts; primary opinion reproduced by OpenJurist. Read authority

[98] IRC §6511(a)–(b). Refund filing periods and separate payment lookbacks. Read authority

[99] KBL, LLP v Community Counseling & Mediation Servs., 123 AD3d 488 (1st Dept 2014). Part II.A. Elements of accountant malpractice: departure from accepted standards and proximate cause. Read authority

[100] Rockman v Bartlett, 49 AD3d 1072 (3d Dept 2008). Part II.A.8. Preparer's treatment of a loss; speculative causation. Read authority

[101] Schreier v Drealan Kvilhaug Hoefker & Co. P.A., No. 20-1731 (8th Cir Mar. 26, 2021) (Minnesota law). Part II.A.8. Persuasive only; reporter citation not retrieved. Read authority

[102] IRS Private Letter Rulings 202403006 and 202143004 (late §475(f) relief denied). Part II.A.7. Nonprecedential (IRC §6110(k)(3)); the link is the first ruling. Read authority

[103] CPLR 201. Part II. Limitations period may be shortened by written agreement. Read authority

[104] CPLR 202. Part II. Borrowing statute and exception for a New York resident. Read authority

[105] CPLR 213. Part II. Subdivision 8 (fraud: greater of six years from accrual or two years from discovery); subdivision 2 (contract). Read authority

[106] John J. Kassner & Co. v City of New York, 46 NY2d 544, 551 (1979); Executive Plaza, LLC v Peerless Ins. Co., 22 NY3d 511 (2014). Part II. Reasonable shortened period enforceable. Link is to Executive Plaza, which quotes Kassner; Kassner itself was read only as quoted there. Read authority

[107] Global Financial Corp. v Triarc Corp., 93 NY2d 525 (1999). Part II. Economic injury ordinarily sustained where the plaintiff resides; opinion reproduction. Read authority

X SOURCES, CURRENCY, AND LIMITS

Law stated as of October 26, 2026. Each authority in the register (Part IX) was compared with the text of the decision, statute, or rule where one could be retrieved: court-published opinions, the New York State Senate website, official agency pages, or reproductions of opinions. No comprehensive citator review (KeyCite or Shepard's) was available, so a statement that an authority has no subsequent history means only that none surfaced in the searches. A statement that no authority was found describes the scope of the searches, not the state of the law.

Authorities read in secondary form. Kassner (46 NY2d 544) was read as quoted in Executive Plaza; Hooper was verified through quotations in Sage Systems; Kenford and Ashland were checked through appellate opinions applying them; Alpert was taken from Shalam and later decisions that quote it; and Credit Alliance and Wehringer were not retrieved in full. Global Financial was read in a reproduction of the opinion.

Items not verified. (1) Pinpoint pages for Davidovici, Taggart, Wehringer, Ragone, Italian Colors, Gunn, and Delta Funding, because the available sources carry no reporter pagination. (2) The enacted text of L 2025, ch 708 and its chapter amendment (L 2026, ch 94), which are reported only in law-firm alerts. (3) The First Department's March 7, 2024 order on the NFGTV appeal (2024 NY Slip Op 63560(U)), which could not be located, so this guide says only that the appeal was withdrawn. (4) The official AD3d citation for the March 10, 2026 decision in Island Consolidated, which is cited by slip opinion number. (5) The text of IRC §401(b) and the paragraph number of the SECURE 2.0 §317 rule: the retroactive-adoption and first-year owner-only deferral points in the timing table rest on IRS Publication 560 (draft) and practitioner summaries. (6) The official reporter citations for Carnegie and SanMiguel.

Scope limits. This guide does not decide whether a fraud or statutory theory can be pleaded separately from a malpractice claim, and it does not develop recovery gross-up, franchisor liability, insurance, or client fault. It does not determine whether the December 2024 Circular 230 proposal has been finalized; the regulation effective for the conduct at issue should be checked. The timing table uses conditional rules and is not a comprehensive eligibility or deadline analysis, and the diligence examples are analytical applications that need case-specific expert assessment, not an exhaustive statutory checklist. Schreier is persuasive authority only, and its reporter citation was not retrieved.

ABOUT THE AUTHOR

Viacheslav Kutuzov is an attorney admitted in the State of New York and the Managing Partner of Kutuzov & Associates, P.C., in New York City. His practice concentrates on U.S. and international taxation, commercial and corporate law, and banking and anti-money-laundering regulation, and it includes tax malpractice matters: evaluating whether a return preparer, accountant, or adviser departed from accepted standards, measuring the resulting loss, and assessing the recovery of damages and attorney's fees. He is also a Trustee of the Kutuzov Foundation, a New York non-profit organization.

Credentials. Mr. Kutuzov was admitted as an Attorney-at-Law in New York after practicing in the state as a Foreign Legal Consultant. He is an Enrolled Agent admitted to practice before the Internal Revenue Service, a federal credential, and a member of the American Bar Association, the New York State Bar Association, and the New York City Bar Association. He holds a Master of Laws (LL.M.) in Taxation from New York Law School and a first degree in law from the School of Law of HSE University in Moscow. His practice reflects a corresponding fluency in cross-border structuring and the interaction of U.S. law with foreign legal regimes.

TAX MALPRACTICE

A tax malpractice claim requires two kinds of knowledge at once: what the tax law and the filing forms required, and what the law allows a client to recover when a professional falls short. Mr. Kutuzov's practice combines both. On the tax side, his work covers the returns, elections, and information filings on which preparer-error claims can turn, described below. On the legal side, this guide reflects the analysis that frames his work in the area: the standard of care for return preparation and the limits of tax minimization; causation and proof of loss; the classification of damages as direct, consequential, or incidental; the recovery of corrective professional fees; fee shifting by contract and under New York's consumer-protection statutes; limitation periods; and the effect of engagement-letter exclusions and arbitration clauses.

TAX PLANNING, COMPLIANCE, AND AUDIT

Mr. Kutuzov advises on U.S. and international taxation, with a particular focus on the international provisions of Subchapter N of the Internal Revenue Code. His tax practice encompasses strategic planning, audit representation, and the preparation of tax opinions and memoranda, together with income-tax-treaty analysis, global supply-chain optimization, multinational structuring, cross-border transactions, and complex tax modeling. On the compliance side, his work spans U.S. federal income and gift-tax returns and audits (Forms 1040, 1041, 1065, and 1120); foreign-information and asset-disclosure filings (Forms 5471, 5472, and 8858); foreign-tax-credit management (Forms 1116 and 1118); Subchapter N filings, including Form 8992 (NCTI/GILTI), Form 8993 (FDDEI), and Form 8975 (country-by-country reporting); business-interest-limitation filings under Section 163(j) (Form 8990); and FBAR and FATCA analysis and reporting.

ASSET PROTECTION AND CONFIDENTIALITY

He counsels high-net-worth individuals, families, and family offices on asset protection and the lawful confidentiality of assets, including domestic and offshore structures such as irrevocable trusts, asset protection trusts, and private interest foundations, with voidable-transaction (fraudulent conveyance) analysis under the Uniform Voidable Transactions Act. He advises on the interaction of FATCA and the OECD Common Reporting Standard with privacy objectives and on the reporting obligations that govern foreign trusts and foundations, so that confidentiality is pursued without compromising full compliance with U.S. and international disclosure requirements.

CORPORATE AND COMMERCIAL LAW

His corporate and transactional practice covers the equity and capital architecture of investment vehicles — classes and series of stock, preferred and carried-interest structures, and the tax classifications that attach to them — together with legal support for mergers and acquisitions, joint ventures, and corporate reorganizations, including counsel on corporate governance and cross-border structuring. He counsels clients on the drafting, negotiation, and execution of commercial agreements in lending and financing, information technology, and services, with an emphasis on secured transactions and negotiable instruments and on creating enforceable obligations that allocate and mitigate risk, the same skills that bear on how engagement terms, exclusions, and fee clauses are read.

BANKING, ANTI-MONEY-LAUNDERING, AND U.S. SANCTIONS

Mr. Kutuzov advises on compliance with the Bank Secrecy Act and the U.S. anti-money-laundering framework, including the regulations of the Office of the Comptroller of the Currency, drawing on experience in financial due diligence, risk assessment and mitigation, and correspondence with financial institutions and regulatory bodies. His sanctions practice addresses the framework under the International Emergency Economic Powers Act (IEEPA), CAATSA, and the Ukraine-/Russia-Related Sanctions Regulations (31 C.F.R. Part 589), and includes counterparty screening against the SDN List and application of the 50% Rule, OFAC general- and specific-license requests, compliance-program development, enforcement defense, and counsel on delisting and remediation.

Kutuzov & Associates, P.C.
55 Broadway, Floor 3, New York, NY 10006
+1 646 8374669 • viacheslav@kutuzov.esq • www.kutuzov.org

NEW YORK TAX MALPRACTICE

Recoverable losses. Attorney fees. Deadlines.

This guide explains how New York law treats the money a taxpayer may recover when a tax preparer, accountant, or adviser makes an error, and how the standard of care, limitation periods, contractual exclusions, consumer-protection fees, and arbitration shape the claim. Authorities are cited throughout.

CONTACT

KUTUZOV & ASSOCIATES, P.C.

55 Broadway, Floor 3, New York, NY 10006

+1 646 8374669 • viacheslav@kutuzov.esq

www.kutuzov.org

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