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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 722

February 12, 2009
Authored by Thissen, Davnie, Hayden, Liebling, Gardner and others
The bill was read for the first time and referred to the Committee on Taxes
March 5, 2009
By motion, recalled and re-referred to the Committee on Civil Justice
March 16, 2009
Committee Recommendation and Adoption of Report:
To Pass as Amended and re-referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; modifying tax preparation services law; amending Minnesota
1.3 Statutes 2008, section 270C.445.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2008, section 270C.445, is amended to read:

1.6 270C.445 TAX PREPARATION SERVICES.

1.7 Subdivision 1. Scope. This section applies to a person who provides tax preparation
1.8 services; except:

1.9 (1) a person who provides tax preparation services for fewer than ten clients in a
1.10 calendar year;

1.11 (2) a person who provides tax preparation services only to immediate family
1.12 members. For the purposes of this section, "immediate family members" means a spouse,
1.13 parent, grandparent, child, or sibling;

1.14 (3) an employee who prepares a tax return for an employer's business;

1.15 (4) any fiduciary, or the regular employees of a fiduciary, while acting on behalf of
1.16 the fiduciary estate, testator, trustor, grantor, or beneficiaries of them; and

1.17 (5) nonprofit organizations providing tax preparation services under the Internal
1.18 Revenue Service Volunteer Income Tax Assistance Program or Tax Counseling for the
1.19 Elderly Program.

1.20 Subd. 2. Definitions. (a) For purposes of this section, the following terms have
1.21 the meanings given.

1.22 (b) "Client" means an individual for whom a tax preparer performs or agrees to
1.23 perform tax preparation services.

2.1 (c) "Person" means an individual, corporation, partnership, limited liability
2.2 company, association, trustee, or other legal entity.

2.3 (d) "Refund anticipation loan" means a loan or any other extension of credit, whether
2.4 provided by the tax preparer or another entity such as a financial institution, in anticipation
2.5 of, and whose payment is secured by, a client's federal or state income tax refund or both.

2.6 (e) "Tax preparation services" means services provided for a fee or other
2.7 consideration to a client to:

2.8 (1) assist with preparing or filing state or federal individual income tax returns;

2.9 (2) assume final responsibility for completed work on an individual income tax
2.10 return on which preliminary work has been done by another; or

2.11 (3) ~~offer or~~ facilitate the provision of refund anticipation loans and refund
2.12 anticipation checks.

2.13 (f) "Tax preparer" or "preparer" means a person providing tax preparation services
2.14 subject to this section.

2.15 (g) "Advertise" means to solicit business through any means or medium.

2.16 (h) "Facilitate" means to individually or in conjunction or cooperation with another
2.17 person:

2.18 (1) accept an application for a refund anticipation loan;

2.19 (2) pay to a client the proceeds, through direct deposit, a negotiable instrument, or
2.20 any other means, of a refund anticipation loan; or

2.21 (3) offer, arrange, process, provide, or in any other manner act to allow the making
2.22 of, a refund anticipation loan.

2.23 (i) "Refund anticipation check" means a negotiable instrument provided to a client
2.24 by the tax preparer or another person, which is issued from the proceeds of a taxpayer's
2.25 federal or state income tax refund or both and represents the net of the refund minus the tax
2.26 preparation fee and any other fees. A refund anticipation check includes a refund transfer.

2.27 Subd. 3. **Standards of conduct.** No tax preparer shall:

2.28 (1) without good cause fail to promptly, diligently, and without unreasonable delay
2.29 complete a client's tax return;

2.30 (2) obtain the signature of a client to a tax return or authorizing document that
2.31 contains blank spaces to be filled in after it has been signed;

2.32 (3) fail to sign a client's tax return when payment for services rendered has been
2.33 made;

2.34 (4) fail or refuse to give a client a copy of any document requiring the client's
2.35 signature within a reasonable time after the client signs the document;

2.36 (5) fail to retain for at least four years a copy of individual income tax returns;

- 3.1 (6) fail to maintain a confidential relationship ~~between themselves and their~~ with
3.2 clients or former clients;
- 3.3 (7) fail to take commercially reasonable measures to safeguard a client's nonpublic
3.4 personal information;
- 3.5 (8) make, authorize, publish, disseminate, circulate, or cause to make, either directly
3.6 or indirectly, any false, deceptive, or misleading statement or representation relating to or
3.7 in connection with the offering or provision of tax preparation services;
- 3.8 (9) require a client to enter into a loan arrangement in order to complete a tax return;
- 3.9 (10) claim credits or deductions on a client's tax return for which the tax preparer
3.10 knows or reasonably should know the ~~taxpayer~~ client does not qualify;
- 3.11 (11) charge, offer to accept, or accept a fee based upon a percentage of an anticipated
3.12 refund for tax preparation services;
- 3.13 (12) under any circumstances, withhold or fail to return to a client a document
3.14 provided by the client for use in preparing the client's tax return;
- 3.15 (13) establish an account in the preparer's name to receive a client's refund through
3.16 a direct deposit or any other instrument unless the client's name is also on the account,
3.17 except that a taxpayer may assign the portion of a refund representing the Minnesota
3.18 education credit available under section 290.0674 to a bank account without the client's
3.19 name, as provided under section 290.0679;
- 3.20 (14) fail to act in the best interests of the client;
- 3.21 (15) fail to safeguard and account for any money handled for the client;
- 3.22 (16) fail to disclose all material facts of which the preparer has knowledge which
3.23 might reasonably affect the client's rights and interests;
- 3.24 (17) violate any provision of section 332.37;
- 3.25 (18) include any of the following in any document provided or signed in connection
3.26 with the provision of tax preparation services:
- 3.27 (i) a hold harmless clause;
- 3.28 (ii) a confession of judgment or a power of attorney to confess judgment against the
3.29 client or appear as the client in any judicial proceeding;
- 3.30 (iii) a waiver of the right to a jury trial, if applicable, in any action brought by or
3.31 against a debtor;
- 3.32 (iv) an assignment of or an order for payment of wages or other compensation for
3.33 services;
- 3.34 (v) a provision in which the client agrees not to assert any claim or defense otherwise
3.35 available;

4.1 (vi) a waiver of any provision of this section or a release of any obligation required
4.2 to be performed on the part of the tax preparer;

4.3 (vii) a waiver of the right to injunctive, declaratory, or other equitable relief or
4.4 relief on a class basis; or

4.5 (viii) a mandatory arbitration clause; or

4.6 (19) if making, providing, or facilitating a refund anticipation loan, fail to provide all
4.7 disclosures required by the federal Truth in Lending Act, United States Code, title 15, in a
4.8 form that may be retained by the client.

4.9 **Subd. 3a. Written agreements required; refund anticipation loans and checks.**

4.10 All agreements to make, provide, or facilitate a refund anticipation loan or refund
4.11 anticipation check must be in writing. No agreement may include a provision that
4.12 directly or indirectly arranges for payment of or deduction from any portion of the refund
4.13 anticipation loan or refund anticipation check for check cashing, credit insurance, attorney
4.14 fees, or the collection of any debt owed to any party for any other good or service other
4.15 than a debt owed to the facilitator for the repayment of a refund anticipation loan and tax
4.16 preparation fees associated with the refund anticipation loan or refund anticipation check.

4.17 **Subd. 4. ~~Required disclosures; refund anticipation loans.~~** (a) ~~If~~ Before or at the
4.18 same time a tax preparer offers to make or facilitate a refund anticipation loan to the
4.19 client, the preparer must make the disclosures in ~~this subdivision. The disclosures must~~
4.20 ~~be made before or at the same time the preparer offers the refund anticipation loan to the~~
4.21 ~~client.~~ subdivision 4a. Before or at the same time a tax preparer offers or facilitates a
4.22 refund anticipation check or refund transfer, the tax preparer must make the disclosures
4.23 in subdivision 4b.

4.24 (b) The disclosures must be provided to a client in a written notice on a single sheet
4.25 of paper, separate from any other document or writing.

4.26 (c) All required statements must be in capital and small font type fonts, in a
4.27 minimum of 14-point type, with at least a double space between each statement.

4.28 (d) The notice must be signed and dated by the tax preparer and the client.

4.29 (e) All required disclosures, notices, and statements must be provided in the client's
4.30 primary language, if the tax preparer advertises in that language.

4.31 ~~(b) The tax preparer must provide to a client a written notice on a single sheet of~~
4.32 ~~paper, separate from any other document or writing, containing:~~

4.33 ~~(1) a legend, centered at the top on the single sheet of paper, in bold, capital letters,~~
4.34 ~~and in 28-point type stating "NOTICE";~~

4.35 ~~(2) the following verbatim statements:~~

5.1 (i) ~~"This is a loan. The annual percentage rate (APR), based on the estimated~~
5.2 ~~payment period, is (fill in the estimated APR)."~~

5.3 (ii) ~~"Your refund will be used to repay the loan. As a result, the amount of your~~
5.4 ~~refund will be reduced by (fill in appropriate dollar amount) for fees, interest, and other~~
5.5 ~~charges."~~

5.6 (iii) ~~"You can get your refund in about two weeks if you file your return electronically~~
5.7 ~~and have the Internal Revenue Service send your refund to your own bank account." and~~

5.8 (3) ~~if the client is subject to additional interest when a refund is delayed, the~~
5.9 ~~following verbatim statement must also be included in the notice: "If you choose to take~~
5.10 ~~this loan and your refund is delayed, you may have to pay additional interest."~~

5.11 (c) ~~All required statements must be in capital and small font type fonts, in a~~
5.12 ~~minimum of 14-point type, with at least a double space between each line in the statement~~
5.13 ~~and four spaces between each statement.~~

5.14 (d) ~~The notice must be signed and dated by the tax preparer and the client.~~

5.15 Subd. 4a. **Refund anticipation loan disclosures.** The disclosure required under
5.16 subdivision 4 for a refund anticipation loan must contain:

5.17 (1) a legend, centered at the top on the single sheet of paper, in bold, capital letters,
5.18 and in 28-point type stating "NOTICE";

5.19 (2) the following verbatim statements:

5.20 (i) "This is a loan. This is not your refund. The annual percentage rate (APR), based
5.21 on the estimated payment period, is (fill in the estimated APR)."

5.22 (ii) "Your refund will be used to repay the loan. As a result, the amount of your
5.23 refund will be reduced by (fill in appropriate dollar amount) for fees, interest, and other
5.24 charges."

5.25 (iii) "You have the right to cancel this transaction by returning the loan check or the
5.26 amount of the loan in cash within one business day after you get the loan."

5.27 (iv) "You can get your refund in about two weeks if you file your return electronically
5.28 and have the Internal Revenue Service send your refund to your own bank account."; and

5.29 (3) if the client is subject to additional interest when a refund is delayed, the
5.30 following verbatim statement must also be included in the notice: "If you choose to take
5.31 this loan and your refund is delayed, you may have to pay."

5.32 Subd. 4b. **Refund anticipation check disclosures.** (a) The disclosure required
5.33 under subdivision 4 for a refund anticipation check must contain:

5.34 (1) a legend, centered at the top on the single sheet of paper, in bold, capital letters,
5.35 and in 28-point type stating "NOTICE";

5.36 (2) the following verbatim statements:

6.1 (i) "You do not have to purchase a refund anticipation check (RAC) to get your
6.2 tax refund."

6.3 (ii) "Generally the IRS can direct deposit your income tax refund to your personal
6.4 bank account within 8 to 15 days after the IRS accepts your tax return for processing."

6.5 (iii) "If you choose to purchase a RAC, your tax return funds will generally be
6.6 made available to you within 8 to 15 days."

6.7 (iv) "A RAC is not a loan."

6.8 (v) "The cost of the RAC is \$ (fill in dollar amount)."

6.9 (vi) "You can either pay for your RAC now or you can have it withheld from
6.10 your refund."

6.11 (vii) "The cost of your tax return is not any more or any less if you purchase a RAC."

6.12 (b) A tax preparer offering a refund anticipation check that uses a different product
6.13 name, including but not limited to refund transfer, must substitute the product name for
6.14 "RAC" in all the statements required under this subdivision.

6.15 Subd. 5. **Itemized bill required.** A tax preparer must provide an itemized statement
6.16 of the charges for services, at least separately stating the charges for:

6.17 (1) return preparation; ~~and~~

6.18 (2) providing or facilitating a refund anticipation loan; ~~and~~

6.19 (3) each fee associated with the provision of a refund anticipation check.

6.20 Subd. 5a. **Nongame wildlife checkoff.** A tax preparer must give written notice of
6.21 the option to contribute to the nongame wildlife management account in section 290.431
6.22 to corporate clients that file an income tax return and to individual clients who file an
6.23 income tax return or property tax refund claim form. This notification must be included
6.24 with information sent to the client at the same time as the preliminary worksheets or other
6.25 documents used in preparing the client's return and must include a line for displaying
6.26 contributions.

6.27 Subd. 5b. **Right to rescind refund anticipation loan.** (a) A client may rescind a
6.28 refund anticipation loan on or before the close of business on the next day of business
6.29 following execution of the loan agreement or receipt of the proceeds of the loan by:

6.30 (1) providing written notification to the tax preparer of the rescission; and

6.31 (2) returning the original check issued for the loan; or

6.32 (3) tendering the amount of the loan to the tax preparer.

6.33 (b) The tax preparer may charge a fee for rescinding a refund anticipation loan
6.34 only if an account has been established at a financial institution to electronically receive
6.35 the refund and the financial institution has charged a fee to establish the account. The
6.36 allowable fee the tax preparer may charge the client rescinding the refund anticipation

7.1 loan may not exceed the fee charged to the tax preparer by the financial institution to
7.2 establish the account.

7.3 Subd. 6. **Enforcement; penalties.** The commissioner may impose an administrative
7.4 penalty of not more than \$1,000 per violation of subdivision 3, 3a, 4, or 5, or 5b, provided
7.5 that a penalty may not be imposed for any conduct that is also subject to the tax return
7.6 preparer penalties in section 289A.60, subdivision 13. The commissioner may terminate a
7.7 tax preparer's authority to transmit returns electronically to the state, if the commissioner
7.8 determines the tax preparer engaged in a pattern and practice of violating this section.
7.9 Imposition of a penalty under this subdivision is subject to the contested case procedure
7.10 under chapter 14. The commissioner shall collect the penalty in the same manner as the
7.11 income tax. Penalties imposed under this subdivision are public data.

7.12 Subd. 6a. **Exchange of data; State Board of Accountancy.** The State Board of
7.13 Accountancy shall refer to the commissioner complaints it receives about tax preparers
7.14 who are not subject to the jurisdiction of the State Board of Accountancy and who are
7.15 alleged to have violated the provisions of subdivisions 3 ~~to~~, 3a, 4, 4a, 4b, 5, and 5b.

7.16 Subd. 6b. **Exchange of data; Lawyers Board of Professional Responsibility.** The
7.17 Lawyers Board of Professional Responsibility may refer to the commissioner complaints
7.18 it receives about tax preparers who are not subject to its jurisdiction and who are alleged
7.19 to have violated the provisions of subdivisions 3 ~~to~~, 3a, 4, 4a, 4b, 5, and 5b.

7.20 Subd. 6c. **Exchange of data; commissioner.** The commissioner shall refer
7.21 complaints about tax preparers who are alleged to have violated the provisions of
7.22 subdivisions 3 ~~to~~, 3a, 4, 4a, 4b, 5, and 5b to:

- 7.23 (1) the State Board of Accountancy, if the tax preparer is under its jurisdiction; and
7.24 (2) the Lawyers Board of Professional Responsibility, if the tax preparer is under
7.25 its jurisdiction.

7.26 Subd. 6d. **Data private.** Information exchanged on individuals under subdivisions
7.27 6a to 6c are private data under section 13.02, subdivision 12, until such time as a penalty
7.28 is imposed as provided in section 326A.08 or by the Lawyers Board of Professional
7.29 Responsibility.

7.30 Subd. 7. **Enforcement; civil actions.** (a) Any violation of this section is an unfair,
7.31 deceptive, and unlawful trade practice within the meaning of section 8.31. An action taken
7.32 under section 8.31 is in the public interest.

7.33 (b) A client may bring a civil action seeking redress for a violation of this section in
7.34 the conciliation or the district court of the county in which unlawful action is alleged to
7.35 have been committed or where the respondent resides or has a principal place of business.

7.36 (c) A ~~district~~ court finding for the plaintiff must award:

- 8.1 ~~(1) actual damages, including;~~
- 8.2 ~~(2) incidental and consequential damages;~~
- 8.3 ~~(3) statutory damages of twice the sum of: (i) the tax preparation fees; and (ii) if the~~
- 8.4 ~~plaintiff violated subdivision 3a, 4, or 5b all interest and fees for a refund anticipation loan;~~
- 8.5 ~~(4) reasonable attorney fees;~~
- 8.6 ~~(5) court costs; and~~
- 8.7 ~~(6) any other equitable relief as the court considers appropriate.~~
- 8.8 Subd. 8. **Limited exemptions; enforcement provisions.** The provisions of this
- 8.9 section, except for ~~subdivision~~ subdivisions 3a, 4, and 5b, do not apply to:
- 8.10 (1) an attorney admitted to practice under section 481.01;
- 8.11 (2) a certified public accountant or other person who is subject to the jurisdiction of
- 8.12 the State Board of Accountancy;
- 8.13 (3) an enrolled agent who has passed the special enrollment examination
- 8.14 administered by the Internal Revenue Service; or
- 8.15 ~~(4) any fiduciary, or the regular employees of a fiduciary, while acting on behalf of~~
- 8.16 ~~the fiduciary estate, the testator, trustor, grantor, or beneficiaries of them;~~
- 8.17 ~~(5) a tax preparer who provides tax preparation services for fewer than six clients~~
- 8.18 ~~in a calendar year;~~
- 8.19 ~~(6) tax preparation services to a spouse, parent, grandparent, child, or sibling of~~
- 8.20 ~~the tax preparer; and~~
- 8.21 ~~(7) the preparation by an employee of the tax return of the employee's employer~~
- 8.22 (4) anyone who provides, or assists in providing, tax preparation services within
- 8.23 the scope of duties as an employee or supervisor of a person who is exempt under this
- 8.24 subdivision.