

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

INTERIM STUDY PROPOSAL 2007-036

State of Arkansas
86th General Assembly
Regular Session, 2007

A Bill

HOUSE BILL 1533

By: Representative Sumpter

Referred to
Revenue & Taxation- House
by the House of Representatives
on 03/29/2007

For An Act To Be Entitled

AN ACT CONCERNING THE REGULATION OF TAX
CONSULTANTS AND TAX PREPARERS; AND FOR OTHER
PURPOSES.

Subtitle

AN ACT CONCERNING THE REGULATION OF TAX
CONSULTANTS AND TAX PREPARERS; AND FOR
OTHER PURPOSES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 17 is amended to add an additional
chapter to read as follows:

CHAPTER 54. TAX CONSULTANTS AND PREPARERS

17-54-101. Definitions.

As used in this chapter:

(1)(A) "Facilitator" means a person that individually or in
conjunction or cooperation with another person processes, receives or accepts
for delivery an application for a refund anticipation loan or a check in
payment of refund anticipation loan proceeds or in any other manner

1 materially facilitates the making of a refund anticipation loan.

2 (B) "Facilitator" does not include:

3 (i) A financial institution;

4 (ii) A person who has been issued a license as a
 5 loan association or lending institution;

6 (iii) An affiliate that is a servicer for a
 7 financial institution or for a person issued a license as a loan association
 8 or lending institution;

9 (iv) A person issued a certificate as a certified
 10 public accountant or licensed as a public accountant by the Oregon Board of
 11 Accountancy; or

12 (v) Any person that acts solely as an intermediary
 13 and does not deal with a taxpayer in the making of a refund anticipation
 14 loan.

15 (2) "Lender" means a person that makes a refund anticipation
 16 loan with the person's own funds or a line of credit or other funding from a
 17 financial institution as defined under Arkansas law, but does not include a
 18 financial institution as defined under Arkansas law;

19 (3) "Refund anticipation loan" means a loan that the lender
 20 arranges to be repaid directly from the proceeds of the taxpayer's federal or
 21 state personal income tax refund.

22 (4)(A) "Refund anticipation loan fee" means the charges, fees or
 23 other consideration charged or imposed by the lender or facilitator for the
 24 making of a refund anticipation loan.

25 (B) "Refund anticipation loan fee" does not mean any
 26 charge, fee or other consideration usually charged or imposed by the
 27 facilitator in the ordinary course of business for nonloan services,
 28 including fees for tax return preparation and fees for electronic filing of
 29 tax returns;

30 (5) "Tax consultant" means a person who is licensed under this
 31 chapter to prepare or advise or assist in the preparation of personal income
 32 tax returns for another and for valuable consideration;

33 (6) "Taxpayer" means an individual who files a federal or
 34 Arkansas personal income tax return; and

35 (7) "Tax preparer" means any person who is licensed under this
 36 chapter as a tax preparer.

1
2 17-54-102. Applicability.

3 This chapter does not apply to:

4 (1) Any full or part-time employee hired to fill a permanent
5 position, who in connection with the duties as an employee has the incidental
6 duty of preparing income tax returns for the business of the employer only;

7 (2) Any attorney at law rendering services in the performance of
8 the duties of an attorney at law;

9 (3) While acting as such, any fiduciary, or his or her regular
10 employees, acting on behalf of the fiduciary estate, the testator, trustor,
11 grantor, or beneficiaries;

12 (4) Any certified public accountant or public accountant holding
13 a valid permit, or a registered business organization, under Arkansas law;

14 (5) Any employee of a certified public accountant, public
15 accountant or registered business organization described in subdivision (4)
16 of this section; and

17 (6) Any person employed by a local, state or federal governmental
18 agency but only in performance of his or her official duties.

19
20 17-54-103. Prohibited acts; preparation of tax returns; refund
21 anticipation loans.

22 Except as otherwise provided in this chapter:

23 (1) A person may not prepare or advise or assist in the preparation of
24 personal income tax returns for another and for valuable consideration or
25 represent that the person is so engaged unless the person is licensed as a
26 tax consultant under this chapter;

27 (2) A tax preparer may prepare or advise or assist in the preparation
28 of tax returns only under the supervision of a tax consultant, or a person
29 described in § 17-54-102(2) and (4), and subject to such conditions and
30 limitations as the State Board of Tax Practitioners may impose by rule; and

31 (3) A person may not be a facilitator of a refund anticipation loan
32 without first being issued a license as a tax consultant or tax preparer
33 under this chapter.

34
35 17-54-201. Qualifications for tax consultant and tax preparer;
36 examination.

1 (a) Every applicant for a license as a tax consultant and every
 2 applicant for licensing as a tax preparer shall:

3 (1) Be not less than 18 years of age;

4 (2) Possess a high school diploma or have passed an equivalency
 5 examination; and

6 (3) Present evidence satisfactory to the State Board of Tax
 7 Practitioners that the applicant has successfully completed not less than
 8 eighty (80) hours in basic personal income tax law, theory and practice at a
 9 school training session or educational institution approved by the board.

10 (b)(1) In addition to the requirements of subsection (a) of this
 11 section, every applicant for licensing as a tax preparer shall pass to the
 12 satisfaction of the board an examination.

13 (2) The examination shall be constructed in a manner that in the
 14 judgment of the board measures the applicant's knowledge of Arkansas and
 15 federal personal income tax law, theory and practice.

16 (c) In addition to the requirements of subsection (a) of this section,
 17 every applicant for licensing as a tax consultant shall:

18 (1)(A) Present evidence satisfactory to the board of active
 19 employment, as described in this chapter, as a tax preparer or employment in
 20 this or another state in a capacity that is, in the judgment of the board
 21 equivalent to that of a tax preparer or tax consultant, for not less than a
 22 cumulative total of seven hundred eighty (780) hours during at least two of
 23 the last five years.

24 (B) Certification by a tax consultant or person described
 25 in § 17-54-102(2) and (4) that the applicant was employed as a tax preparer
 26 under supervision for the period indicated in the certificate shall be
 27 considered evidence satisfactory to the board of the applicant's employment
 28 as a tax preparer for the period indicated.

29 (C) If an applicant has worked less than a cumulative
 30 total of seven hundred eighty (780) hours in at least two (2) of the last
 31 five (5) years, the board may consider the number of hours employed, the
 32 number of years employed, the number of tax returns prepared and whether the
 33 work involved contributed directly to the professional competence of the
 34 individual in determining if a tax preparer or tax consultant has met the
 35 work experience requirement; and

36 (2)(A) Pass to the satisfaction of the board an examination that

1 is constructed in a manner that in the judgment of the board measures the
 2 applicant's knowledge of Arkansas and federal personal income tax law, theory
 3 and practice.

4 (B) The examination for a tax consultant's license shall
 5 differ from the examination for a tax preparer's license in that it shall be
 6 of a more exacting nature and require higher standards of knowledge of
 7 personal income tax law, theory and practice.

8 (d)(1) If, in the judgment of the board, an applicant has, in
 9 combination, the education and experience to qualify for a tax consultant's
 10 or preparer's license, but does not meet or cannot present evidence of strict
 11 compliance with the requirements of subsection (a)(3) or subsection (c)(1) of
 12 this section, the board may allow some of the applicant's education or
 13 experience to substitute one for the other.

14 (2) However, nothing in this subsection shall be construed to
 15 allow a waiver of, or substitution for, any qualifications needed for a tax
 16 consultant's or preparer's license other than those described in subsection
 17 (a)(3) or subsection (c)(1) of this section.

18
 19 17-54-202. Tax consultant application.

20 (a) Every person desiring to be licensed as a tax consultant shall
 21 apply in writing to the State Board of Tax Practitioners.

22 (b) The application forms shall be approved by the board.

23 (c) Each application shall include or be accompanied by evidence,
 24 satisfactory to the board, that the applicant meets the qualifications
 25 prescribed in § 17-54-201.

26 (d) Each application shall be accompanied by the examination fee as
 27 provided under this chapter.

28
 29 17-54-203. Tax preparer's application.

30 (a) Every person desiring to be licensed as a tax preparer shall apply
 31 in writing to the State Board of Tax Practitioners.

32 (b) The application forms shall be approved by the board.

33 (c) Each application shall include or be accompanied by evidence,
 34 satisfactory to the board, that the applicant meets the qualifications
 35 prescribed in § 17-54-201.

36 (d) The application shall be accompanied by the examination fee as

1 provided under this chapter.

2
3 17-54-204. Licensing of person licensed in another state or enrolled
4 to practice before Internal Revenue Service; requirements.

5 (a) The State Board of Tax Practitioners may issue a license to an
6 applicant for a license as a tax consultant or as a tax preparer who:

7 (1) Presents evidence satisfactory to the board that the
8 applicant is licensed as a tax consultant or preparer in a state that has
9 requirements for licensing substantially similar to the requirements for
10 licensing of this state; and

11 (2) Has passed to the satisfaction of the board an examination
12 covering Arkansas personal income tax law, theory and practice; the
13 provisions of this chapter and the code of professional conduct prescribed by
14 the board.

15 (b) Notwithstanding § 17-54-201(a)) and (c), but as otherwise provided
16 in this chapter, the board shall license as a tax consultant any person who
17 is, on the date of the application for a tax consultant's license, enrolled
18 to practice before the Internal Revenue Service pursuant to 31 C.F.R. part 10
19 as existing on January 1, 2007 if the person has passed to the satisfaction
20 of the board an examination covering Arkansas personal income tax law, theory
21 and practice; the provisions of this chapter and the code of professional
22 conduct prescribed by the board.

23 (c) Except as otherwise provided in this section, no examination shall
24 be required for licensing under this section.

25 (d) Any person desiring to be licensed under this section shall make
26 written application to the board and shall pay to the board at the time
27 required by the board the examination and license fees provided under this
28 chapter.

29
30 17-54-205. Issuance of licenses.

31 (a) The State Board of Tax Practitioners shall license as a tax
32 consultant or a tax preparer each applicant who:

33 (1) Demonstrates to the satisfaction of the board fitness for a
34 license;

35 (2) Pays to the board an initial license fee as provided under
36 this chapter; and

1 (3) Has no disciplinary actions pending before the board.

2 (b) The board shall issue evidence of licensing to each person
 3 licensed.

4
 5 17-54-206. Preparation of tax returns by corporation, firm, or
 6 partnership; requirements; liability; prohibitions.

7 (a) A sole proprietorship, partnership, corporation or other legal
 8 entity, through individuals who are authorized within this state to render
 9 those services, may engage in the preparation, or in advising or assisting in
 10 the preparation of personal income tax returns for another and for valuable
 11 consideration and represent that it is so engaged if the entity:

12 (1) Registers annually with the State Board of Tax Practitioners
 13 in the manner prescribed by the board;

14 (2) Designates and reports in the manner prescribed by the board
 15 the authorized individual or individuals who are responsible for the tax
 16 return preparation activities and decisions of the entity; and

17 (3) Complies with this chapter and the rules adopted by the
 18 board.

19 (b) A sole proprietorship, partnership, corporation or other legal
 20 entity shall not be relieved of responsibility for the conduct or acts of its
 21 agents, employees or officers by reason of its compliance with subsection (a)
 22 of this section, nor shall a licensed tax consultant be relieved of
 23 responsibility for professional services performed by reason of employment by
 24 or relationship with a sole proprietorship, partnership, corporation or other
 25 legal entity.

26 (c) A sole proprietorship, partnership, corporation or other legal
 27 entity shall not engage in tax return preparation activities under subsection
 28 (a) of this section if the tax consultant, or the proprietor, a partner, a
 29 principal, an officer, director or manager, or a shareholder of the entity,
 30 is:

31 (1) An individual whose license as a tax consultant or tax
 32 preparer under this chapter is permanently revoked;

33 (2) An individual to whom the board has refused to issue or
 34 renew a license on the basis of dishonest conduct or conduct involving tax
 35 preparation;

36 (3) An individual whose occupational license, permit or

1 registration has been revoked or refused by another state regulatory agency
2 or the Internal Revenue Service for dishonest conduct or conduct involving
3 tax preparation; or

4 (4) A sole proprietorship, partnership, corporation or other
5 legal entity prohibited from engaging in tax return preparation activities
6 under subsection (a) of this section by reason of this subsection.

7 (d) The shareholders referred to in subsection (c) of this section
8 are:

9 (1) If the corporation is publicly traded, a shareholder that
10 owns more than ten percent (10%) in value of the outstanding stock of the
11 corporation; and

12 (2) If the corporation is not publicly traded, any shareholder.

13 (e) For purposes of subsections (c) and (d) of this section, "publicly
14 traded" means traded on an established securities market.

15 (f)(1) If a sole proprietorship, partnership, corporation or other
16 legal entity must sever a relationship in order that it may engage or may
17 continue to engage in tax preparation activities in compliance with this
18 section, the entity shall be allowed a reasonable time to sever the
19 relationship.

20 (2) Except as provided under subsection (g) of this section, the
21 time allowed to sever a relationship shall not exceed one hundred eighty
22 (180) days after the board gives notice that the severance is required.

23 (3)(A) The notice shall include a statement affording an
24 opportunity for hearing on the issue of severance.

25 (B) The notice and all proceedings conducted under this
26 section shall be in accordance with the Arkansas Administrative Procedure
27 Act.

28 (g) If a hearing is requested under subsection (f) of this section, or
29 if an appeal is taken of the board's order following hearing, the board or
30 court may allow additional time for the affected parties to comply with any
31 order requiring severance.

32
33 17-54-207. Renewal of licenses; restoration of lapsed license.

34 (a)(1) Any licensed tax consultant and tax preparer shall apply to the
35 State Board of Tax Practitioners and pay the fee for a renewal of the
36 license.

1 (2) The application shall be made annually, on or before a date
 2 established by the board by rule.

3 (3) The application shall be accompanied by evidence
 4 satisfactory to the board that the person applying for renewal of the license
 5 has completed the continuing education required by this chapter.

6 (b) At least thirty (30) days before the annual renewal date, the
 7 board shall notify the licensee that the annual renewal application and fee
 8 are due.

9 (c) Any license that is not renewed within fifteen (15) days after the
 10 annual renewal date shall lapse.

11 (d) The board may restore any lapsed license upon payment to the board
 12 of all past unpaid renewal fees and a fee for restoration of a lapsed license
 13 that shall be provided under this chapter and upon proof of compliance with
 14 any continuing education requirements that may be adopted by the board by
 15 rule.

16
 17 17-54-207. Continuing education requirement; waiver.

18 (a)(1) Except as provided in subsection (b) of this section, upon
 19 annual renewal of a tax preparer's or tax consultant's license, each person
 20 licensed as a tax consultant or tax preparer under this chapter shall submit
 21 evidence satisfactory to the State Board of Tax Practitioners that the person
 22 has completed at least thirty (30) hours of instruction or seminar in
 23 subjects related to income tax preparation since the preceding license
 24 renewal date.

25 (2) If the board does not receive evidence that the continuing
 26 education requirement has been completed by the applicant, the board shall
 27 not renew the applicant's active license.

28 (b) The board may exempt a tax consultant or tax preparer from the
 29 continuing education required by this section upon application showing
 30 evidence satisfactory to the board of inability to comply because of unusual
 31 or extenuating circumstances.

32
 33 17-54-208. Licenses to be displayed.

34 Each tax consultant and preparer shall display the evidence of
 35 licensing issued to the tax consultant and preparer in accordance with rules
 36 adopted by the State Board of Tax Practitioners.

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17-54-209. Use of title "tax consultant."

(a) An individual may not assume or use the title or designation "tax consultant" unless the person is licensed as a tax consultant under this chapter.

(b) A sole proprietorship, partnership, corporation or other legal entity may not assume or use the title or designation "tax consultant" unless the entity is in compliance with this chapter.

17-54-210. Inactive status; application; renewal; reactivation; revocation or suspension; prohibition.

(a)(1) Whenever a tax consultant or tax preparer ceases to engage in the preparation or in advising or assisting in the preparation of personal income tax returns, the consultant or preparer may apply to the State Board of Tax Practitioners for inactive status.

(2) A license that is granted inactive status may be renewed upon payment of the license fee as provided under this chapter.

(3) No proof that the continuing education required by this chapter has been fulfilled need be presented to the board for renewal of an inactive license.

(b) A license in inactive status may be reactivated upon:

(1) Payment of a reactivation fee provided under this chapter; and

(2) Proof of compliance with continuing education requirements as may be adopted by the board by rule.

(c) A license in inactive status may be revoked or suspended by the board when conditions exist under which the board would have been authorized to revoke or suspend the license if it were active.

(d) No person whose license is inactive shall act as a tax consultant or as a tax preparer.

17-54-211. Fees.

The fees for licenses and registrations issued, renewed, reactivated or otherwise, and for examinations under this chapter shall be prescribed by the State Board of Tax Practitioners but shall not exceed the following:

(1) For application for examination for a tax consultant's

- 1 license, seventy dollars (\$70.00);
- 2 (2) For application for examination for a tax preparer's license,
- 3 forty dollars (\$40.00);
- 4 (3) For issuance or renewal of a tax consultant's license,
- 5 seventy-five dollars (\$75.00);
- 6 (4) For issuance or renewal of a tax preparer's license, sixty-
- 7 five dollars (\$65.00);
- 8 (5) For issuance or renewal of a tax consultant's inactive
- 9 license, fifty dollars (\$50.00);
- 10 (6) For issuance or renewal of a tax preparer's inactive
- 11 license, thirty-five dollars (\$35.00);
- 12 (7) For reactivation of a tax consultant's inactive license,
- 13 seventy-five dollars (\$75.00);
- 14 (8) For reactivation of a tax preparer's inactive license,
- 15 sixty-five dollars (\$65.00);
- 16 (9) For restoration of lapsed license, twenty-five dollars
- 17 (\$25.00);
- 18 (10) For issuance or replacement of a duplicate license, ten
- 19 dollars (\$10.00);
- 20 (11) For issuance of a replacement or duplicate tax consultant
- 21 certificate, fifteen dollars (\$15.00);
- 22 (12) For registration or registration renewal for a sole
- 23 proprietorship, partnership, corporation or other legal entity, ninety-five
- 24 dollars (\$95.00);
- 25 (13)(A) For issuance or renewal of a combined tax consultant's
- 26 or tax preparer's license and registration for a sole proprietorship,
- 27 partnership, corporation or other legal entity, one hundred twenty dollars
- 28 (\$120).
- 29 (B) Eligibility for a combined license shall be determined
- 30 under rules adopted by the board; and
- 31 (14) For annual registration of a branch office of a sole
- 32 proprietorship, partnership, corporation or other legal entity, five dollars
- 33 (\$5.00).
- 34
- 35 17-54-212. Tax consultant's records.
- 36 (a)(1) Except as provided in this section, every person licensed as a

1 tax consultant shall keep records of all personal income tax returns prepared
 2 by the person, or in the preparation of which advice or assistance of the
 3 person has been given.

4 (2) The records of the returns shall be kept for a period of not
 5 less than four (4) years after the date of the preparation, advice or
 6 assistance.

7 (b) If a tax consultant is employed by another tax consultant, the
 8 records shall be kept by the employing tax consultant.

9 (c) If a tax consultant who has been designated as responsible for the
 10 tax return preparation activities and decisions of a partnership, corporation
 11 or other legal entity ceases to be connected with the partnership,
 12 corporation or other legal entity, the records shall be retained by the
 13 partnership, corporation or other legal entity.

14
 15 17-54-213. Secretary of State as agent for service of process against
 16 nonresident; fee.

17 (a) The acceptance by a nonresident of a license as tax consultant or
 18 a tax preparer shall be considered equivalent to the appointment by the
 19 nonresident of the Secretary of State as attorney upon whom may be served any
 20 summons, process or pleading in any action or suit against the nonresident in
 21 any court of this state, arising out of any business done by the nonresident
 22 as a tax consultant or tax preparer in this state.

23 (b)(1) The acceptance of a license shall be considered equivalent to
 24 any agreement by the nonresident that any summons, process or pleading in the
 25 action or suit may be made by leaving a copy thereof, with a fee of two
 26 dollars (\$2.00), with the Secretary of State.

27 (2) Service under subdivision (b)(1) of this section shall be
 28 sufficient and valid personal service upon the defendant if notice of such
 29 service and a copy of the summons, process or pleading is sent forthwith by
 30 registered mail or by certified mail with return receipt by the plaintiff or
 31 the attorney of the plaintiff to the defendant at the most recent address
 32 furnished to the State Board of Tax Practitioners by the nonresident tax
 33 consultant or tax preparer or to the last-known address.

34 (3) An affidavit of the plaintiff or the attorney of the
 35 plaintiff of the mailing shall be appended to the summons, process or
 36 pleading and entered as a part of the return thereof.

1 (4) However, personal service outside of the state in accordance
 2 with the statute relating to personal service of summons outside of the state
 3 shall relieve the plaintiff from such mailing requirement.

4 (c)(1) Any summons received or provided in this section shall require
 5 the defendant to appear and answer the complaint within four weeks after
 6 receipt thereof by the Secretary of State.

7 (2) The court in which the action or suit is brought may order a
 8 continuance as may be necessary to afford the defendant reasonable
 9 opportunity to defend the action.

10 (3) The fee of two dollars (\$2.00) paid by the plaintiff to the
 11 Secretary of State shall be taxed as costs in favor of the plaintiff if the
 12 plaintiff prevails in the action.

13 (4) The Secretary of State shall keep a record of each summons,
 14 process or pleading served upon the Secretary of State under this section,
 15 showing the day and hour of service.

16
 17 17-54-214. Continuing authority of board.

18 The lapsing, suspension or revocation of a license by operation of law
 19 or by order of the State Board of Tax Practitioners or by decision of a court
 20 of law, or the voluntary surrender of a license by a licensee, shall not
 21 deprive the board of jurisdiction to proceed with any investigation of or any
 22 action or disciplinary proceeding against the licensee, or to revise or
 23 render null and void an order suspending or revoking the license.

24
 25 17-54-215. Disciplinary action; grounds.

26 The State Board of Tax Practitioners may refuse to issue or renew a tax
 27 consultant or preparer's license, or may suspend or revoke a tax consultant
 28 or preparer's license, or may reprimand any person licensed as a tax
 29 consultant or tax preparer for:

30 (1) Violation of §§ 17-54-103, 17-54-216 or 17-54-301;

31 (2) Failure to keep the records required by § 17-54-212;

32 (3) Negligence or incompetence in tax consultant or tax preparer
 33 practice or when acting in the capacity of a tax preparer or tax consultant
 34 in another state, or under an exempt status or in preparation of the personal
 35 income tax return for another state or the federal government;

36 (4)(A) Conduct resulting in a conviction of a felony under the

1 Laws of any state or of the United States; or

2 (B) Conviction of any crime, an essential element of which
3 is dishonesty, fraud or deception, under the laws of any state or of the
4 United States;

5 (5) Conviction of willful failure to pay any tax or estimated
6 tax, file any tax return, keep records or supply information required under
7 the tax laws of any state or of the United States, or conviction of the
8 willful making, rendering, delivery, disclosure, signing or verifying of any
9 false or fraudulent list, return, account, statement or other document, or of
10 supplying any false or fraudulent information, required under the tax laws of
11 any state or of the United States;

12 (6) Failure to comply with continuing education requirements
13 under this chapter unless the requirements have been waived by the board;

14 (7) Violation of the code of professional conduct prescribed by
15 the board;

16 (8) Failure to pay any civil penalty incurred under this chapter
17 within the time determined by the board;

18 (9) Cancellation, revocation or refusal to renew by any state or
19 federal agency of, or entry of a consent order, stipulated agreement or
20 judgment related to, the person's authority to practice law, to practice as a
21 certified public accountant or a public accountant or to practice under other
22 regulatory law in any state, or to practice as an enrolled agent, if the
23 grounds for the cancellation, revocation, refusal to renew, consent order,
24 stipulated agreement or judgment were related to income tax preparation or if
25 dishonesty, fraud or deception was involved;

26 (10) Cancellation, revocation or refusal to renew by any state
27 or federal agency of, or entry of a consent order, stipulated agreement or
28 judgment related to, a business's authority to conduct operations related to
29 the practice of law, certified public accountancy, public accountancy or
30 other services provided under regulatory law in any state, or to provide
31 enrolled agent services, if the grounds for the cancellation, revocation,
32 refusal to renew, consent order, stipulated agreement or judgment involved
33 the conduct or actions of the licensee or applicant and:

34 (1) Were related to income tax preparation; or

35 (2) Involved dishonesty, fraud or deception.

36

17-54-216. Prohibited acts.

It is unlawful for any person to:

(1) Obtain or attempt to obtain a license as a tax consultant or a tax preparer by any fraudulent representation;

(2) Represent that the person is licensed as a tax consultant or a tax preparer if the person is not so licensed;

(3) Present or attempt to use the license of another person;

(4) Attempt to use a suspended, lapsed or revoked license;

(5) Falsely impersonate a licensee under this chapter;

(6) Engage in dishonesty, fraud or deception relating to the preparation of personal income tax returns; or

(7) Violate a position of trust, including a position of trust outside the licensee's professional practice.

17-54-217. Names of tax preparers and other information furnished by Department of Finance and Administration; use of information.

(a) If a personal income tax return is prepared by someone other than the taxpayer, the Department of Finance and Administration may furnish to the State Board of Tax Practitioners a copy of that portion of the return that shows:

(1) The name, business name and address of the preparer;

(2) The date of preparation; and

(3) The signature of the preparer.

(b) In instances where the department or the board has reasonable grounds to believe the person preparing the return prepared it in violation of this chapter, the department may furnish the following additional information:

(1) The name and address of the taxpayer;

(2) The identifying number used on any form, report or schedule filed as part of the return; and

(3) The tax year reported on the return, or any portion of the return.

(c)(1) The board, its members, officers and employees, shall use the names and addresses furnished under this section solely in the enforcement of this chapter and shall not otherwise divulge or make known such information.

(2) Any person who violates this prohibition against disclosure,

1 upon conviction, is guilty of a class A misdemeanor.

3 17-54-301. Refund anticipation loan disclosures.

4 (a) Prior to a taxpayer's completion of an application for a refund
5 anticipation loan, the facilitator shall clearly disclose in writing to the
6 taxpayer on a form separate from the application:

7 (1)(A) A listing or table of refund anticipation loan fees and
8 the annual percentage rates, as defined by the federal Truth in Lending Act,
9 15 U.S.C. 1601 et seq., charged by the facilitator or lender for three or
10 more representative refund anticipation loan amounts.

11 (B) For each loan amount, the schedule shall list
12 separately the amount of each fee and the amount of interest charged by the
13 facilitator or lender and the total amount of fees and interest charged;

14 (2) That the refund anticipation loan is a loan and not the
15 taxpayer's actual personal income tax refund;

16 (3) That electronic filing of the taxpayer's tax return is
17 available without applying for a refund anticipation loan;

18 (4) The average time announced by the appropriate taxing
19 authority within which the taxpayer can expect to receive a refund if the
20 taxpayer does not obtain a refund anticipation loan and the taxpayer's return
21 is filed:

22 (A) Electronically and the refund is directly deposited in
23 the taxpayer's bank account; or

24 (B) By mail and the refund is directly deposited in the
25 taxpayer's bank account or mailed to the taxpayer;

26 (5) That the Internal Revenue Service does not guarantee:

27 (A) That the full amount of the anticipated refund will be
28 paid; or

29 (B) A specific date on which the taxpayer will receive the
30 refund.

31 (6) That the taxpayer is responsible for repayment of the loan
32 and related fees in the event the tax refund is not paid or is not paid in
33 full;

34 (7) The estimated time within which the proceeds of the loan will
35 be paid to the taxpayer if the loan is approved; and n

36 (8) The fees charged by the facilitator or lender if the refund

1 anticipation loan is not approved.

2 (b) Prior to entering into a refund anticipation loan agreement, the
3 facilitator shall clearly disclose to the taxpayer:

4 (1) The estimated total fees for the loan; and

5 (2) The estimated annual percentage rate, as defined by the
6 federal Truth in Lending Act, 15 U.S.C. 1601 et seq., for the loan.

7
8 17-54-302. Local government regulation of refund anticipation loans
9 prohibited; preemption.

10 (a) A unit of a local government may not adopt any rule, code or
11 ordinance to restrict or limit any requirements under this chapter relating
12 to refund anticipation loans.

13 (b) This chapter supersedes and preempts any rule, code or ordinance of
14 any unit of a local government relating to refund anticipation loans.

15
16 17-54-401. State Board of Tax Practitioners; term; qualifications.

17 (a)(1) There is created a State Board of Tax Practitioners.

18 (2) The board shall consist of seven (7) members who shall be
19 appointed by the Governor.

20 (b)(1)(A) The term of office for each member shall be three (3) years
21 and no member shall be eligible for appointment to more than three (3) terms
22 of office

23 (B) Members serve at the pleasure of the Governor and may
24 be removed before the end of their term.

25 (2) Before the expiration of the term of a member, the Governor
26 shall appoint a successor or reappoint the incumbent member if the incumbent
27 member is eligible for reappointment.

28 (3) The Governor shall fill vacancies on the board as they may
29 occur and a member appointed to fill a vacancy shall serve the unexpired term
30 of the predecessor.

31 (c)(1) Of the members of the board six (6) shall be licensed as tax
32 consultants under this chapter.

33 (2) Each of the six (6) shall have been engaged in the
34 preparation of personal income tax returns for another and for a valuable
35 consideration for no less than five (5) years.

36 (3) One member of the board shall be a member of the general

1 public.

2
3 17-54-402. Powers of board.

4 The State Board of Tax Practitioners shall have the following powers,
5 in addition to the powers otherwise granted by this chapter, and shall have
6 all powers necessary or proper to carry the granted powers into effect:

7 (1) To determine qualifications of applicants for licensing as a
8 tax consultant or a tax preparer in this state; to cause examinations to be
9 prepared, conducted and graded; and to issue licenses to qualified applicants
10 upon their compliance with this chapter and the rules of the board;

11 (2)(A) To restore the license of any tax consultant or preparer
12 whose license has been suspended or revoked.

13 (B) The power of the board to suspend any license under
14 this chapter includes the power to restore:

15 (i) At a time certain; or

16 (ii) When the person subject to suspension fulfills
17 conditions for reissuance set by the board.

18 (C) The power of the board to restore a license under this
19 section specifically includes the power to restore a license suspended or
20 revoked for the reason that the person has been convicted of a crime. In
21 making a determination to restore a license, the board shall consider the
22 relationship of the facts which supported the conviction to the code of
23 professional conduct and all intervening circumstances in determining the
24 fitness of the person to receive or hold a tax consultant's or tax preparer's
25 license;

26 (3) To prescribe fees, subject to this chapter, and to collect
27 fees;

28 (4)(A) To investigate alleged violations of this chapter, or any
29 rule or order adopted under this chapter.

30 (B) The board may keep information gathered pursuant to an
31 investigation by the board confidential until there is a final order or
32 determination by the board, unless disclosure is considered necessary by the
33 board for the investigation or prosecution of an alleged violation of this
34 chapter, or any rule or order adopted under this chapter.

35 (C) The board may keep personal financial information
36 gathered pursuant to an investigation by the board confidential after a final

1 order or determination by the board, unless disclosure is considered
 2 necessary by the board for the investigation or prosecution of an alleged
 3 violation of this chapter, or any rule or order adopted thereunder.

4 (D) For purposes of this subsection, personal financial
 5 information includes but is not limited to tax returns;

6 (5) To enforce the provisions of this chapter and to exercise
 7 general supervision over tax consultant and tax preparer practice;

8 (6) To issue an order directed to a person to cease and desist
 9 from any violation or threatened violation of §§ 17-54-103, 17-54-206, 17-54-
 10 216 or 17-54-301, or any rule or order adopted thereunder, if the board has
 11 reason to believe that a person has been engaged, is engaging or is about to
 12 engage in any violation of §§ 17-54-103, 17-54-206, 17-54-216 or 17-54-301,
 13 or any rule or order adopted thereunder;

14 (7)(A) To assess civil penalties within a cease and desist order
 15 issued under subsection (6) of this section if the board has reason to
 16 believe that a person has been engaged or is engaging in any violation of §§
 17 17-54-103, 17-54-206, 17-54-216 or 17-54-301, or any rule or order adopted
 18 thereunder.

19 (B) The civil penalty may not exceed five thousand dollars
 20 (\$5,000) per violation;

21 (8) To formulate a code of professional conduct for tax
 22 consultants and tax preparers;

23 (9) To assess against the licensee or any other person found
 24 guilty of violating any provision of this chapter, or any rule or order
 25 adopted thereunder, in addition to any other sanctions, the costs associated
 26 with the disciplinary or other action taken by the board; and

27 (10) To order that any person who has engaged in or is engaging
 28 in any violation of this chapter, or any rule or order adopted thereunder,
 29 shall offer to rescind and pay restitution to anyone harmed by the violation
 30 who seeks rescission.

31
 32 17-54-403. Cease and desist orders.

33 (a)(1) Upon entry of a cease and desist order under this chapter, the
 34 State Board of Tax Practitioners shall promptly give appropriate notice of
 35 the cease and desist order as provided in this section.

36 (2) The notice shall state that a hearing will be held on the

1 cease and desist order if written demand for a hearing is filed with the
2 board within twenty (20) days after the date of service of the cease and
3 desist order.

4 (b)(1) If timely demand for a hearing is filed under subsection (a) of
5 this section, the board shall hold a contested case hearing on the cease and
6 desist order as provided by the Arkansas Administrative Procedures Act.

7 (2) In the event of a contested case hearing, the civil
8 penalties assessed in the cease and desist order are suspended until issuance
9 of a final order, but the remaining provisions of the cease and desist order
10 shall remain in full force and effect until issuance of the final order.

11 (3) A person is not entitled to judicial review of a cease and
12 desist order unless the person has made a timely demand for a hearing.

13 (c) After the hearing, the board shall enter a final order vacating,
14 modifying or affirming the cease and desist order.

15 (d) A person aggrieved by a cease and desist order of the board that
16 was the subject of a timely application for hearing shall be entitled to
17 judicial review of the cease and desist order under the Arkansas
18 Administrative Procedures Act.

19 (e) A judgment of a reviewing court under the Arkansas Administrative
20 Procedures Act does not bar the board from thereafter vacating or modifying a
21 cease and desist order involved in the proceeding for review, or entering any
22 new order, for a proper cause that was not decided by the reviewing court.

23 (f) The board may file an injunction against a person for failure to
24 comply with a cease and desist order.

25
26 17-54-404. Civil penalties.

27 (a)(1) Any person who violates any provision of this chapter, any rule
28 adopted thereunder or any order of the State Board of Tax Practitioners shall
29 incur, in addition to any other penalty provided by law, a civil penalty in
30 an amount of not more than five thousand dollars (\$5,000) for each violation.

31 (2) The amount of penalty shall be determined by the board after
32 taking into consideration the gravity of the violation, the previous record
33 of the violator in complying, or in failing to comply, with the provisions of
34 this chapter or the rules adopted thereunder, and other considerations as the
35 board considers appropriate.

36 (b) All penalties recovered under this section shall be paid into the

1 General Revenue Fund to be credited to the board for use in carrying out the
2 provisions of this section.

3
4 17-54-405. Educational program as remedy.

5 Under appropriate circumstances, as a further remedy in a proceeding
6 which may or may not result in imposition of a civil penalty under § 17-54-
7 404 or in cancellation, suspension, revocation or refusal to renew a tax
8 consultant's or preparer's license, the State Board of Tax Practitioners may
9 impose the requirement of successful participation and completion of an
10 educational program specified by the board as correction or as a condition to
11 reissuance, restoration, retention or renewal of the license.

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