

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.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

# A Bill

HOUSE BILL 1533

5 By: Representative Sumpter  
6  
7

## For An Act To Be Entitled

8 AN ACT CONCERNING THE REGULATION OF TAX  
9 CONSULTANTS AND TAX PREPARERS; AND FOR OTHER  
10 PURPOSES.  
11

## Subtitle

12 AN ACT CONCERNING THE REGULATION OF TAX  
13 CONSULTANTS AND TAX PREPARERS; AND FOR  
14 OTHER PURPOSES.  
15  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code Title 17 is amended to add an additional  
22 chapter to read as follows:  
23

24 CHAPTER 54. TAX CONSULTANTS AND PREPARERS  
25

26 17-54-101. Definitions.

27 As used in this chapter:

28 (1)(A) "Facilitator" means a person that individually or in  
29 conjunction r cooperation with another person processes, receives or accepts  
30 for delivery an application for a refund anticipation loan or a check in  
31 payment of refund anticipation loan proceeds or in any other manner  
32 materially facilitates the making of a refund anticipation loan.

33 (B) "Facilitator" does not include:

34 (i) A financial institution;

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



1 (iii) An affiliate that is a servicer for a  
2 financial institution or for a person issued a license as a loan association  
3 or lending institution;

4 (iv) A person issued a certificate as a certified  
5 public accountant or licensed as a public accountant by the Oregon Board of  
6 Accountancy; or

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

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

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

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

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

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

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

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

32  
33 17-54-102. Applicability.

34 This chapter does not apply to:

35 (1) Any full or part-time employee hired to fill a permanent  
36 position, who in connection with the duties as an employee has the incidental

1 duty of preparing income tax returns for the business of the employer only;

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

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

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

9 (5) Any employee of a certified public accountant, public  
 10 accountant or registered business organization described in subdivision (4)  
 11 of this section; and

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

14  
 15 17-54-103. Prohibited acts; preparation of tax returns; refund  
 16 anticipation loans.

17 Except as otherwise provided in this chapter:

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

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

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

29  
 30 17-54-201. Qualifications for tax consultant and tax preparer;  
 31 examination.

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

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

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

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

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

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

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

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

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

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

31           (2)(A) Pass to the satisfaction of the board an examination that  
 32 is constructed in a manner that in the judgment of the board measures the  
 33 applicant's knowledge of Arkansas and federal personal income tax law, theory  
 34 and practice.

35           (B) The examination for a tax consultant's license shall  
 36 differ from the examination for a tax preparer's license in that it shall be

1 of a more exacting nature and require higher standards of knowledge of  
 2 personal income tax law, theory and practice.

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

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

13  
 14 17-54-202. Tax consultant application.

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

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

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

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

23  
 24 17-54-203. Tax preparer's application.

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

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

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

31 (d) The application shall be accompanied by the examination fee as  
 32 provided under this chapter.

33  
 34 17-54-204. Licensing of person licensed in another state or enrolled  
 35 to practice before Internal Revenue Service; requirements.

36 (a) The State Board of Tax Practitioners may issue a license to an

1 applicant for a license as a tax consultant or as a tax preparer who:

2 (1) Presents evidence satisfactory to the board that the  
 3 applicant is licensed as a tax consultant or preparer in a state that has  
 4 requirements for licensing substantially similar to the requirements for  
 5 licensing of this state; and

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

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

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

20 (d) Any person desiring to be licensed under this section shall make  
 21 written application to the board and shall pay to the board at the time  
 22 required by the board the examination and license fees provided under this  
 23 chapter.

24  
 25 17-54-205. Issuance of licenses.

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

28 (1) Demonstrates to the satisfaction of the board fitness for a  
 29 license;

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

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

33 (b) The board shall issue evidence of licensing to each person  
 34 licensed.

35  
 36 17-54-206. Preparation of tax returns by corporation, firm, or

1 partnership; requirements; liability; prohibitions.

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

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

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

12 (3) Complies with this chapter and the rules adopted by the  
13 board.

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

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

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

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

31 (3) An individual whose occupational license, permit or  
32 registration has been revoked or refused by another state regulatory agency  
33 or the Internal Revenue Service for dishonest conduct or conduct involving  
34 tax preparation; or

35 (4) A sole proprietorship, partnership, corporation or other  
36 legal entity prohibited from engaging in tax return preparation activities

1 under subsection (a) of this section by reason of this subsection.

2 (d) The shareholders referred to in subsection (c) of this section  
3 are:

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

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

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

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

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

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

20 (B) The notice and all proceedings conducted under this  
21 section shall be in accordance with the Arkansas Administrative Procedure  
22 Act.

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

27  
28 17-54-207. Renewal of licenses; restoration of lapsed license.

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

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

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



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

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

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

11  
 12       17-54-207. Continuing education requirement; waiver.

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

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

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

27  
 28       17-54-208. Licenses to be displayed.

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

32  
 33       17-54-209. Use of title "tax consultant."

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

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

4  
5       17-54-210. Inactive status; application; renewal; reactivation;  
6 revocation or suspension; prohibition.

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

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

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

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

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

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

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

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

26  
27       17-54-211. Fees.

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

31       (1) For application for examination for a tax consultant's  
32 license, seventy dollars (\$70.00);

33       (2) For application for examination for a tax preparer's license,  
34 forty dollars (\$40.00);

35       (3) For issuance or renewal of a tax consultant's license,  
36 seventy-five dollars (\$75.00);

1           (4) For issuance or renewal of a tax preparer's license, sixty-  
 2 five dollars (\$65.00);

3           (5) For issuance or renewal of a tax consultant's inactive  
 4 license, fifty dollars (\$50.00);

5           (6) For issuance or renewal of a tax preparer's inactive  
 6 license, thirty-five dollars (\$35.00);

7           (7) For reactivation of a tax consultant's inactive license,  
 8 seventy-five dollars (\$75.00);

9           (8) For reactivation of a tax preparer's inactive license,  
 10 sixty-five dollars (\$65.00);

11           (9) For restoration of lapsed license, twenty-five dollars  
 12 (\$25.00);

13           (10) For issuance or replacement of a duplicate license, ten  
 14 dollars (\$10.00);

15           (11) For issuance of a replacement or duplicate tax consultant  
 16 certificate, fifteen dollars (\$15.00);

17           (12) For registration or registration renewal for a sole  
 18 proprietorship, partnership, corporation or other legal entity, ninety-five  
 19 dollars (\$95.00);

20           (13)(A) For issuance or renewal of a combined tax consultant's  
 21 or tax preparer's license and registration for a sole proprietorship,  
 22 partnership, corporation or other legal entity, one hundred twenty dollars  
 23 (\$120).

24           (B) Eligibility for a combined license shall be determined  
 25 under rules adopted by the board; and

26           (14) For annual registration of a branch office of a sole  
 27 proprietorship, partnership, corporation or other legal entity, five dollars  
 28 (\$5.00).

29  
 30           17-54-212. Tax consultant's records.

31           (a)(1) Except as provided in this section, every person licensed as a  
 32 tax consultant shall keep records of all personal income tax returns prepared  
 33 by the person, or in the preparation of which advice or assistance of the  
 34 person has been given.

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

1 assistance.

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

4 (c) If a tax consultant who has been designated as responsible for the  
 5 tax return preparation activities and decisions of a partnership, corporation  
 6 or other legal entity ceases to be connected with the partnership,  
 7 corporation or other legal entity, the records shall be retained by the  
 8 partnership, corporation or other legal entity.

9  
 10 17-54-213. Secretary of State as agent for service of process against  
 11 nonresident; fee.

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

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

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

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

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

35 (c)(1) Any summons received or provided in this section shall require  
 36 the defendant to appear and answer the complaint within four weeks after

1 receipt thereof by the Secretary of State.

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

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

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

11  
 12 17-54-214. Continuing authority of board.

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

19  
 20 17-54-215. Disciplinary action; grounds.

21 The State Board of Tax Practitioners may refuse to issue or renew a tax  
 22 consultant or preparer's license, or may suspend or revoke a tax consultant  
 23 or preparer's license, or may reprimand any person licensed as a tax  
 24 consultant or tax preparer for:

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

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

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

31 (4)(A) Conduct resulting in a conviction of a felony under the  
 32 laws of any state or of the United States; or

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

36 (5) Conviction of willful failure to pay any tax or estimated

1 tax, file any tax return, keep records or supply information required under  
2 the tax laws of any state or of the United States, or conviction of the  
3 willful making, rendering, delivery, disclosure, signing or verifying of any  
4 false or fraudulent list, return, account, statement or other document, or of  
5 supplying any false or fraudulent information, required under the tax laws of  
6 any state or of the United States;

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

9 (7) Violation of the code of professional conduct prescribed by  
10 the board;

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

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

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

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

30 (2) Involved dishonesty, fraud or deception.

31

32 17-54-216. Prohibited acts.

33 It is unlawful for any person to:

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

36 (2) Represent that the person is licensed as a tax consultant or

1 a tax preparer if the person is not so licensed;

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

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

4 (5) Falsely impersonate a licensee under this chapter;

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

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

9  
 10 17-54-217. Names of tax preparers and other information furnished by  
 11 Department of Finance and Administration; use of information.

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

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

17 (2) The date of preparation; and

18 (3) The signature of the preparer.

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

23 (1) The name and address of the taxpayer;

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

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

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

31 (2) Any person who violates this prohibition against disclosure,  
 32 upon conviction, is guilty of a class A misdemeanor.

33  
 34 17-54-301. Refund anticipation loan disclosures.

35 (a) Prior to a taxpayer's completion of an application for a refund  
 36 anticipation loan, the facilitator shall clearly disclose in writing to the

1 taxpayer on a form separate from the application:

2 (1)(A) A listing or table of refund anticipation loan fees and  
 3 the annual percentage rates, as defined by the federal Truth in Lending Act,  
 4 15 U.S.C. 1601 et seq., charged by the facilitator or lender for three or  
 5 more representative refund anticipation loan amounts.

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

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

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

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

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

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

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

22 (A) That the full amount of the anticipated refund will be  
 23 paid; or

24 (B) A specific date on which the taxpayer will receive the  
 25 refund.

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

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

31 (8) The fees charged by the facilitator or lender if the refund  
 32 anticipation loan is not approved.

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

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

36 (2) The estimated annual percentage rate, as defined by the



1 federal Truth in Lending Act, 15 U.S.C. 1601 et seq., for the loan.

2  
 3 17-54-302. Local government regulation of refund anticipation loans  
 4 prohibited; preemption.

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

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

10  
 11 17-54-401. State Board of Tax Practitioners; term; qualifications.

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

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

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

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

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

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

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

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

31 (3) One member of the board shall be a member of the general  
 32 public.

33  
 34 17-54-402. Powers of board.

35 The State Board of Tax Practitioners shall have the following powers,  
 36 in addition to the powers otherwise granted by this chapter, and shall have

1 all powers necessary or proper to carry the granted powers into effect:

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

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

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

10 (i) At a time certain; or

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

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

21 (3) To prescribe fees, subject to this chapter, and to collect  
22 fees;

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

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

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

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

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

3           (6) To issue an order directed to a person to cease and desist  
 4 from any violation or threatened violation of §§ 17-54-103, 17-54-206, 17-54-  
 5 216 or 17-54-301, or any rule or order adopted thereunder, if the board has  
 6 reason to believe that a person has been engaged, is engaging or is about to  
 7 engage in any violation of §§ 17-54-103, 17-54-206, 17-54-216 or 17-54-301,  
 8 or any rule or order adopted thereunder;

9           (7)(A) To assess civil penalties within a cease and desist order  
 10 issued under subsection (6) of this section if the board has reason to  
 11 believe that a person has been engaged or is engaging in any violation of §§  
 12 17-54-103, 17-54-206, 17-54-216 or 17-54-301, or any rule or order adopted  
 13 thereunder.

14           (B) The civil penalty may not exceed five thousand dollars  
 15 (\$5,000) per violation;

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

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

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

26  
 27           17-54-403. Cease and desist orders.

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

31           (2) The notice shall state that a hearing will be held on the  
 32 cease and desist order if written demand for a hearing is filed with the  
 33 board within twenty (20) days after the date of service of the cease and  
 34 desist order.

35           (b)(1) If timely demand for a hearing is filed under subsection (a) of  
 36 this section, the board shall hold a contested case hearing on the cease and

1 desist order as provided by the Arkansas Administrative Procedures Act.

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

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

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

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

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

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

20  
 21 17-54-404. Civil penalties.

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

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

31 (b) All penalties recovered under this section shall be paid into the  
 32 General Revenue Fund to be credited to the board for use in carrying out the  
 33 provisions of this section.

34  
 35 17-54-405. Educational program as remedy.

36 Under appropriate circumstances, as a further remedy in a proceeding

1 which may or may not result in imposition of a civil penalty under § 17-54-  
2 404 or in cancellation, suspension, revocation or refusal to renew a tax  
3 consultant's or preparer's license, the State Board of Tax Practitioners may  
4 impose the requirement of successful participation and completion of an  
5 educational program specified by the board as correction or as a condition to  
6 reissuance, restoration, retention or renewal of the license.

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