

CHAPTER 258

AN ACT concerning tax preparation services and supplementing Title 17 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.17:11D-1 Definitions relative to tax preparation services.

1. As used in this act:

"Client" means an individual who engages the services of a tax preparer.

"Commissioner" means the Commissioner of Banking and Insurance.

"Refund anticipation loan" means a loan that is secured by, or that the tax preparer anticipates from, a client's federal or State income tax refund.

"Tax preparation services" means services provided for a fee or other consideration to a client to:

- (1) assist with preparing or filing State or federal individual income tax returns;
- (2) assume final responsibility for completed work on an individual income tax return on which preliminary work has been completed by another; or
- (3) offer, facilitate, or make refund anticipation loans.

"Tax preparer" means an individual, corporation, partnership, limited liability company, association, trustee or other entity who provides tax preparation services.

C.17:11D-2 Actions prohibited to tax preparer.

2. No tax preparer shall:

- a. Without reasonable cause, fail to promptly, diligently and without unreasonable delay complete a client's tax return;
- b. Obtain the signature of a client to a tax return or authorizing document containing blank entries to be completed after the document has been signed;
- c. Fail to sign a client's tax return as the tax preparer;
- d. Fail or refuse to give a client a copy of any document requiring the client's signature within a reasonable time after the client signs the document;
- e. Fail to retain for at least four years a copy of individual income tax returns;
- f. Fail to maintain a confidential relationship with a client or former client;
- g. Fail to take reasonable measures to maintain the confidentiality of information or documents provided by the client;
- h. Produce, authorize, publish, disseminate, circulate, or cause to make any false, deceptive, or misleading statement or representation relating to or in connection with the offering or provision of tax preparation services;
- i. Require a client to enter into a refund anticipation loan in order to complete a tax return;
- j. Claim, or make representations to a client concerning, credits or deductions for which the tax preparer knows or reasonably should know the client does not qualify;
- k. Charge, offer to accept, or accept a fee based on a percentage of an anticipated refund in exchange for tax preparation services; or
- l. Withhold or decline to return to a client documentation provided by the client for use in preparing a client's tax return.

C.17:11D-3 Refund anticipation loans, compliance, disclosures required.

3. a. Any tax preparer offering, facilitating, or making refund anticipation loans shall comply with the provisions of the "New Jersey Licensed Lenders Act," P.L.1996, c.157

(C.17:11C-1 et seq.), N.J.S.2C:21-19, and R.S.31:1-1 et seq. The interest rate for any loan shall include any rate, fee, charge, consideration, or other thing of value received or retained by, or credited to, the lender, directly or indirectly, for the loan or forbearance. b. At the time a tax preparer offers or facilitates a refund anticipation loan to the client, the tax preparer shall provide, and verbally explain, to the client the following statement, to be printed in at least 14-point type:

NOTICE TO BORROWER

THIS IS A LOAN. THE ANNUAL PERCENTAGE RATE (APR), BASED ON THE ESTIMATED PAYMENT PERIOD IS (fill in estimated APR). YOUR TAX REFUND WILL BE USED TO REPAY THE LOAN. AS A RESULT, THE AMOUNT OF YOUR REFUND WILL BE REDUCED BY (fill in the dollar amount) FOR FEES, INTEREST AND OTHER CHARGES.

AS AN ALTERNATIVE TO THIS LOAN, YOU CAN RECEIVE YOUR FULL REFUND IN APPROXIMATELY TWO WEEKS IF YOU FILE YOUR RETURN ELECTRONICALLY AND THE INTERNAL REVENUE SERVICE WILL SEND YOUR FULL REFUND TO YOUR BANK ACCOUNT.

c. If, under the terms of the refund anticipation loan, the client is subject to additional interest when a refund is delayed, the following statement shall also be included in the notice:

IF YOU CHOOSE TO TAKE THIS LOAN AND YOUR REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL INTEREST.

d. A tax preparer may use an alternative disclosure in lieu of the disclosure set forth in subsections b. and c. provided that:

(1) the information provided to the taxpayer in the alternative disclosure includes information substantially equivalent in scope and content to the specific language set forth in subsections b. and c.;

(2) the alternative disclosure includes a chart listing examples of the refund anticipation loan fees and Annual Percentage Rates, calculated using the guidelines established under the federal Truth in Lending Act, title I of Pub.L.90-321 (15 U.S.C.s.1601 et seq.), for loans of at least three different representative loan amounts; and

(3) the alternative disclosure includes a chart listing the estimated timelines for the delivery of funds to the taxpayer under various delivery methods, including Internal Revenue Service mailed check, Internal Revenue Service direct deposit into a taxpayer's preexisting bank account, and through a refund anticipation loan.

C.17:11D-4 Itemized statement of service charges.

4. A tax preparer shall provide an itemized statement of service charges to the client, including, but not limited to, charges for each of the following:

- a. tax return preparation;
- b. electronic filing of a tax return; and
- c. providing or facilitating a refund anticipation loan.

C.17:11D-5 Additional penalties.

5. In addition to any sanctions provided by N.J.S.2C:21-19, R.S.31:1-1 et seq., or any other provision of law, a tax preparer who violates any provision of this act shall be liable to a civil administrative penalty not exceeding \$1,000 for each violation, to be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

C.17:11D-6 Inapplicability of act.

6. The provisions of this act shall not apply to:
 - a. a tax preparer providing tax preparation services to less than six clients per calendar year;
 - b. an individual providing tax preparation services for a spouse, parent, grandparent, child or sibling;
 - c. an employee who, as part of the regular clerical duties of his or her employment, prepares an employer's income, sales or payroll tax returns;
 - d. any fiduciary, or the regular employee of a fiduciary, while acting on behalf of the fiduciary estate, the testator, trustor, grantor, or their beneficiaries;
 - e. an attorney admitted to practice law in New Jersey;
 - f. a certified public accountant or public accountant qualified to practice in New Jersey;
 - g. an enrolled agent who has passed the special enrollment examination administered by the Internal Revenue Service; or
 - h. the Internal Revenue Service's Volunteer Income Tax Assistance (VITA) Program, provided that it receives no compensation for or in connection with any services performed for or products purchased by the taxpayer.

C.17:11D-7 Rules, regulations.

7. The commissioner shall promulgate rules and regulations in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) necessary to carry out the provisions of this act.

8. This act shall take effect on the first day of the third month following enactment.

Approved January 11, 2008.