

SENATE - ASSEMBLY

(Prefiled)

January 7, 2009

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

Part VV

§ 2.

The tax law is amended by adding a new section 32 to read as follows:

§ 32. Registration of tax return preparers. (a) For purposes of this section, the following terms have the specified meanings:

(1) "Attorney" means an attorney admitted to practice law in New York state or one or more of the other states or jurisdictions of the United States.

(2) "Certified public accountant" means an accountant licensed pursuant to section seventy-four hundred four of the education law or a similar law of one or more of the other states or jurisdictions of the United States.

(3) "Commercial tax return preparer" means a tax return preparer who: (A) prepared ten or more returns for compensation in the preceding calendar year and will prepare at least one return for compensation during the current calendar year; or (B) prepared fewer than ten returns in the preceding calendar year but will prepare ten or more returns for the current calendar year.

(4) "Commercial tax return preparation business" means an entity that employs individuals who prepare tax returns and that meets the thresholds described in paragraph three of this subdivision.

(5) "Creditor" means any person who makes a refund anticipation loan or who takes an assignment of a refund anticipation loan.

(6) "Facilitator" means a person who individually or in conjunction or cooperation with another person: (a) solicits the execution of, processes, receives, or accepts an application or agreement for a refund

anticipation loan or refund anticipation check, (b) serves or collects upon a refund anticipation loan or refund anticipation check; or (c) in any other manner facilitates the making of a refund anticipation loan or refund anticipation check. This term excludes any employees of a facilitator who provide only clerical or other comparable support services to such facilitator.

(7) "Electronic" means computer technology.

(8) "Enrolled agent" means an agent enrolled to practice before the internal revenue service pursuant to section 10.4 of subpart A of part ten of title thirty-one of the code of federal regulations.

(9) "Public accountant" means an accountant licensed pursuant to section seventy-four hundred five of the education law or a similar law of one or more of the other states or jurisdictions of the United States.

(10) "Refund anticipation check" means a check, stored value card, or other payment mechanism which: (a) represents the proceeds of a tax refund; (b) was issued by a depository institution or other person that received a direct deposit of the tax refund or tax credits; and (c) a fee or other consideration is paid for such payment mechanism.

(11) "Refund anticipation loan" means a loan that is secured by or that the creditor arranges to be repaid directly or indirectly from the proceeds of an income tax refund or tax credits. A refund anticipation loan also includes any sale, assignment, or purchase of tax refund at a discount or for a fee, whether or not the amount is required to be repaid to the buyer or assignee if the internal revenue service or the department denies or reduces the amount of the tax refund.

(12) "Return" means a return or report relating to a tax administered by the commissioner.

(13) "Tax" means any tax, fee, special assessment or other imposition administered by the commissioner.

(14) "Tax return preparer" means an individual who prepares a substantial portion of any return for compensation. Enrolled agents or employees of a tax return preparer or a commercial tax return preparation business who prepare returns for clients of that preparer or preparation business, as applicable, and partners who prepare returns for clients of a partnership engaged in a commercial tax return preparation business, are all "tax return preparers" for purposes of this section. Excluded from the definition of "tax return preparer" are attorneys, public accountants, and certified public accountants, who are registered with or licensed by the state, and employees preparing returns under the supervision of such attorneys, public accountants, and certified public accountants. Also excluded are volunteer tax preparers, employees of a business or partners in a partnership whose job responsibilities include preparation of only the business' or partnership's returns, and employees of a tax return preparer or a commercial tax return preparation business who provides only clerical or other comparable services.

(b)(1) Each tax return preparer, who will prepare at least one return in a calendar year, and each facilitator, who will facilitate the making of a refund anticipation loan or refund anticipation check, must register electronically with the department for that calendar year, in accordance with instructions prescribed by the commissioner.

(2)(A) Upon completion of the registration process, each tax return preparer and facilitator will be issued a tax preparer or facilitator

registration certificate. If an individual acts as both a tax return preparer and a facilitator, one registration certificate shall indicate both activities.

(B) In accordance with instructions prescribed by the commissioner, each tax return preparer and facilitator will also be assigned a unique identification number by the department, which must be used by the tax return preparer and facilitator on each return which the tax return preparer is required to sign and each refund anticipation loan and refund anticipation check the facilitator is required to sign.

(C) If a tax return preparer or facilitator is an employee or prospective employee of a tax return preparer, a commercial tax return preparation business, or a facilitator, the tax return preparer, commercial tax return preparation business or facilitator must ensure that the employee or prospective employee is properly registered with the department and possesses a valid tax preparer or facilitator registration certificate. If an individual acts as both a tax return preparer and a facilitator one registration certificate shall indicate both activities.

(3) Each registered tax return preparer and facilitator must electronically re-register with the department annually, in accordance with instructions prescribed by the commissioner. If, at any time during them year following registration or re-registration, as applicable, any information provided by the tax return preparer or facilitator upon registration or re-registration is no longer correct, the tax return preparer or facilitator must update his or her information in accordance with instructions prescribed by the commissioner.

(4) Each tax return preparer preparing any return must sign the document and include the unique identification number specified in paragraph two of this subdivision, in accordance with instructions prescribed by the commissioner.

(c)(1) Each commercial tax return preparer must electronically pay an annual fee of one hundred dollars to the department, in accordance with instructions prescribed by the commissioner. Registration of a commercial tax return preparer is not complete until payment of the fee is made.

(2) All fees received by the commissioner pursuant to this subdivision, reduced by those amounts the commissioner determines are necessary to cover administrative costs to administer the registration program prescribed by this section and the costs of any reimbursements to commercial tax return preparers that may be required due to duplicative fee payments under this subdivision, must be deposited monthly to the credit of the general fund of the state. The commissioner will maintain a system of accounts showing the amount of money collected and disbursed from the fee imposed by this subdivision.

(d) The issuance of a tax preparer or facilitator registration certificate to provide tax preparation services or refund anticipation loan services is not, and must not be advertised as, an endorsement by the department of the tax return preparer or the facilitator, or his or her qualifications or the services rendered by him or her.

(e) A tax return preparer who has not registered with the department, or a commercial tax return preparer who has not paid the required registration fee, will not be allowed to represent his or her clients before the division of taxation or the division of tax appeals. This sanction is in addition to any penalties which may be imposed pursuant to subdivision (f) of this section.

(f) (1) A tax return preparer or facilitator shall not: (A) charge or

impose any fee, charge or other consideration in the making or facilitating of a refund anticipation loan or refund anticipation check apart from the fee charged by the creditor or bank that provided the loan or check;

(B) Engage in unfair or deceptive acts or practices in the facilitating of a refund anticipation check or a refund anticipation loan, including making any oral statements contradicting any of the information required to be disclosed under the Taxpayer Bill of Rights as set forth in sections three hundred seventy-one through three hundred seventy-three of the general business law;

(C) Directly or indirectly arrange for a third party to charge any interest, fee or charge related to a refund anticipation loan or refund anticipation check;

(D) Include any of the following provisions in any documents provided or signed to obtain a refund anticipation loan or refund anticipation check, including the loan application or agreement: (i) a hold harmless clause; (ii) a confession of judgment clause; (iii) a waiver of the right to a jury trial; (iv) any assignment of or order for payment of wages or other compensation for services; (v) a waiver of any provision of the Taxpayer Bill of Rights, as set forth in sections three hundred seventy-one through three hundred seventy-three of the general business law; or (vi) a waiver of the right to injunctive, declaratory, other equitable relief, or relief on a class wide basis. Any aforementioned waivers shall be deemed null, void and of no effect;

(E) Take or arrange for a creditor to take a security interest in any property interest of the taxpayer other than the proceeds of the tax refund to secure payment of a refund anticipation loan;

(F) Directly or indirectly, individually or in conjunction or cooperation with another person, engage in the collection of an outstanding or delinquent refund anticipation loan for any creditor or assignee of, in conjunction with or on the same premises as a third party engaged in check cashing for a fee;

(H) Make a misrepresentation of fact in obtaining or attempting to obtain a registration; or

(I) Engage in any other action prohibited by rules promulgated by the commissioner.

(2) If a tax return preparer violates any one of the provisions provided for in this subdivision, then the tax return preparer must pay a penalty of five hundred dollars for each such violation, in addition to any other penalties provided for in this section.

(G) (1) If a tax return preparer or facilitator is required to register or re-register with the department pursuant to paragraph one or three of subdivision (b) of this section, as applicable, and fails to do so in accordance with the terms of this section, then the tax return preparer or facilitator must pay a penalty of two hundred fifty dollars. Provided, however, that if the tax return preparer or facilitator complies with the registration requirements of this section within ninety calendar days after notification of assessment of this penalty is sent by the department, then this penalty must be abated. If the tax return preparer or facilitator continues to fail to register or re-register after the ninety calendar day period, the tax return preparer or facilitator must pay an additional penalty of five hundred dollars if the failure is for not more than one month, with an additional five hundred dollars for each additional month or fraction thereof during which the failure continues. Once the ninety calendar days specified in this paragraph have expired, the

penalty can be waived only for good cause shown by the tax return preparer or facilitator.

(2) If a commercial tax return preparer fails to pay the fee as required in paragraph one of subdivision (c) of this section, for a calendar year, then the commercial tax return preparer must pay a penalty of fifty dollars for each return the commercial tax return preparer has filed with the department in that calendar year. Provided however, that if the commercial tax return preparer complies with the payment requirements of paragraph one of subdivision (c) of this section, within ninety calendar days after notification of the assessment of this penalty is sent by the department, then this penalty must be abated. The maximum penalty that may be imposed under this paragraph on any commercial tax return preparer during any calendar year must not exceed five thousand dollars. Once the ninety calendar days specified in this paragraph have expired, the penalty can be waived only for good cause shown by the commercial tax return preparer.

(3) If a tax return preparer fails to sign his or her name to any return that requires the tax return preparer's signature, or a facilitator fails to sign his or her name to any refund anticipation loan or refund anticipation check facilitation documentation, then the tax return preparer or facilitator must pay a penalty in the amount of two hundred fifty dollars for each failure to so sign. Provided, however, that this penalty can be waived only for good cause shown by the tax return preparer or facilitator. The maximum penalty imposed under this paragraph on any tax return preparer with respect to returns filed during any calendar year by the tax return preparer, or on any facilitator with respect to any refund anticipation loan or refund anticipation check facilitation documentation completed during any calendar year by the facilitator must not exceed ten thousand dollars. Provided, however, that if a tax return preparer or facilitator has been penalized under this paragraph for a preceding calendar year and again fails to sign his or her name on any return that requires the tax return preparer's signature or again fails to sign his or her name on any refund anticipation loan or refund anticipation check facilitation documentation during a subsequent calendar year, then the penalty under this paragraph for each failure will be five hundred dollars, and no annual cap will apply.

(4) If a tax return preparer or a facilitator fails to include the unique identification number assigned by the department pursuant to subparagraph (B) of paragraph two of subdivision (b) of this section on any return, or any return anticipation loan or return anticipation check facilitation documentation that requires his or her signature, then the tax return preparer or facilitator must pay a penalty of one hundred dollars for each failure to include his or her unique identification number. Provided, however, that this penalty can be waived only for good cause shown by the tax return preparer or facilitator. The maximum penalty imposed under this paragraph on any tax return preparer or facilitator with respect to returns filed during any calendar year must not exceed two thousand five hundred dollars; provided, however, that if a tax return preparer or facilitator has been penalized under this paragraph for a preceding calendar year and again fails to include the unique identification number on one or more returns during a subsequent calendar year, then the penalty under this paragraph for each failure will be two hundred fifty dollars, and no annual cap will apply.

(5) If a tax return preparer, facilitator or a commercial tax return

preparation business employs an individual to prepare tax returns who is not registered with the department and does not possess a valid tax preparer or facilitator registration certificate, then the tax return preparer, facilitator or commercial tax return preparation business, as applicable, will be subject to a penalty of five hundred dollars per occurrence. This penalty can be waived only for good cause shown.

(6) The penalties provided for by this subdivision must be paid upon notice and demand and will be assessed, collected and paid in the same manner as taxes under article twenty-seven of this chapter.

(g) The provisions of this section will apply exclusively to the registration of tax return preparers and facilitators with the department, payment of the registration fee if required by commercial tax return preparers, the signing of returns and use of the unique identification numbers assigned by the department upon registration. Other provisions of this chapter or any other provision of law prescribing additional requirements applicable to tax return preparers or facilitators will not be affected by the provisions of this section except set forth expressly herein, and will remain in full force and effect.

§ 5.

Section 371 of the general business law, as added by chapter 432 of the laws of 2008, is amended to read as follows:§ 371. Definitions For the purposes of this article:(a) "Facilitator" means a person who individually or in conjunction or cooperation with another person:
(i) solicits the execution of, processes, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check; (ii) serves or collects upon a refund anticipation loan or refund anticipation check; or (iii) in any other manner that facilitates the making of a refund anticipation loan or refund anticipation check. This term excludes any employees of a facilitator who provide only clerical or other comparable support services to such facilitator. (b) "Tax preparer" or "preparer" means a person, partnership, corporation or other business entity, that in exchange for consideration advises or assists or offers to advise or assist in the preparation of income tax returns for another.
~~[(b)]~~ (c) "Refund anticipation check" means a check, stored value card, or other payment mechanism: (i) representing the proceeds of a tax refund; (ii) which was issued by a depository institution or other person that received a direct deposit of the tax refund or tax credits;and (iii) for which a fee or other consideration has been paid for such payment mechanism.(d) "Refund anticipation loan" means [any loan a taxpayer may receive against his or her anticipated income tax refund.(e)] a loan that is secured by or that the creditor arranges to be repaid directly or indirectly from the proceeds of an income tax refund or tax credits. A refund anticipation loan also includes any sale, assignment, or purchase of tax refund at a discount or for a fee, whether or not the amount is required to be repaid to the buyer or assignee if the internal revenue service or the department denies or reduces the amount of the tax refund. (e) "Department" means the department of taxation and finance.

§ 6.

Section 372 of the general business law, as added by chapter 432 of the laws of 2008, is amended to read as follows:

§ 372. Consumer bill of rights regarding tax preparers. (a) A tax preparer shall provide his or her customers with a receipt containing an address and phone number at which the preparer can be contacted through out the year. (b) The department shall, in accordance with regulations promulgated by the commissioner of taxation and finance, produce and make available to taxpayers and tax preparers an informational flier regarding consumers' rights and laws concerning tax preparers to be called a "consumer bill of rights regarding tax preparers". The department shall consult with the state consumer protection board to enhance distribution of fliers to consumers. The flier shall also be made available on the ~~[department's]~~ department and the state consumer protection board's internet site, and shall contain information including, but not

YOU ACTUALLY RECEIVE IN YOUR TAX REFUND. IF YOUR REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL COSTS. IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU ARE ELIGIBLE TO RECEIVE A GROSS TAX REFUND OF APPROXIMATELY \$(insert amount). IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU WILL BE RESPONSIBLE TO PAY \$(insert amount) IN FEES FOR THE LOAN. AFTER THESE FEES ARE PAID, YOU WILL RECEIVE APPROXIMATELY \$ (insert amount) AS YOUR LOAN. THE ESTIMATED ANNUAL PERCENTAGE RATE OF YOUR REFUND ANTICIPATION LOAN IS (insert amount)%. THIS IS BASED ON THE ACTUAL AMOUNT OF TIME YOU WILL BE LENT MONEY THROUGH THIS REFUND ANTICIPATION LOAN. IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN EXPECT TO 27 RECEIVE YOUR LOAN WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date). IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN STILL RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE MAIL, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date). IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR TAX REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date)."

(ii) Before any taxpayer enters into an agreement to receive a refund anticipation check, the tax preparer facilitating the agreement shall provide the following disclosure to the taxpayer in writing in at least fourteen-point type: "YOU ARE NOT REQUIRED TO ENTER INTO THIS REFUND ANTICIPATION CHECK AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS INFORMATION. IF YOU DO TAKE OUT THIS REFUND ANTICIPATION CHECK, YOU WILL BE RESPONSIBLE TO PAY \$(insert amount) IN FEES FOR THE CHECK TO BE ISSUED BY (insert name of issuer of refund anticipation check). YOU CAN AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN THE SAME AMOUNT OF TIME BY HAVING YOUR REFUND DIRECTLY DEPOSITED INTO YOUR OWN BANK ACCOUNT. YOU CAN ALSO WAIT FOR THE FEDERAL OR STATE REFUND TO BE MAILED TO YOU. IF YOU DO ENTER INTO THIS REFUND ANTICIPATION CHECK AGREEMENT, YOU CAN EXPECT TO RECEIVE YOUR CHECK BY APPROXIMATELY TWO BUSINESS DAYS OF (insert date). IF YOU DO NOT ENTER INTO THIS REFUND ANTICIPATION CHECK AGREEMENT, YOU CAN STILL RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE MAIL, YOU CAN EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insert date). IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR TAX REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT, YOU CAN

EXPECT TO RECEIVE YOUR REFUND WITHIN APPROXIMATELY TWO BUSINESS DAYS OF (insertdate)."

(iii) It shall be the obligation of the tax preparer to complete the required [~~disclosure~~] disclosures accurately with all relevant information for each taxpayer and to ensure that the completed disclosure form is signed by the taxpayer before he or she enters into a refund anticipation loan or a refund anticipation check, with a copy of the same provided to the taxpayer. The name and the unique identification number of the tax return preparer (and facilitator, if different) assigned pursuant to section thirty-two of the tax law must be included on the disclosure form provided to the taxpayer.

(f) (1) If a taxpayer applies for a refund anticipation loan, the facilitator must also orally inform the taxpayer in the language primarily used for oral communications between the facilitator and taxpayer:

(i) that the product is a loan that only lasts one to two weeks;

(ii) if the tax refund is less than expected, the taxpayer is liable for the full amount of the loan and must repay any difference;

(iii) if the refund is delayed for any reason, there may be additional costs, such as additional interest, that the taxpayer will have to pay;

(iv) the amount of the refund anticipation loan fee; and

(v) the refund anticipation loan interest rate.

(2) If a taxpayer applies for a refund anticipation check, the facilitator must also orally inform the taxpayer in the language primarily used for oral communications between the facilitator and taxpayer:

(i) the amount of the refund anticipation check fee; and

(ii) that the taxpayer can receive a refund in the same amount of time without a fee if the tax return is filed electronically, and the consumer chooses direct deposit to their own personal bank account.

(g) Any person, partnership, corporation or other business entity who violates any provision of this section or any of the regulations promulgated pursuant to this section shall be liable for a civil penalty of not less than two hundred fifty dollars nor more than five hundred dollars for the first violation and for each succeeding violation a civil penalty of not less than five hundred dollars nor more than seven hundred fifty dollars. The penalties provided for by this subdivision

must be paid upon notice and demand and will be assessed, collected and paid in the same manner as taxes under article twenty-seven of the tax law. ~~(f)~~ (h) Apart from subdivision ~~(d)~~ (e) of this

section and the accompanying penalties as listed in subdivision ~~(e)~~ (f) of this section, the provisions of this section shall not apply to: (1) an officer or employee of a corporation or business enterprise who, in his or her capacity as such, advises or assists in the preparation of income tax returns relating to such corporation or business enterprise;

(2) an attorney at law who advises or assists in the preparation of income tax returns in the practice of law and the employees thereof;

(3) a fiduciary and the employees thereof who advise or assist in the preparation of income tax returns on behalf of the fiduciary estate, the testator, trustee, grantor or beneficiaries thereof;

(4) a certified public accountant licensed pursuant to the education law or licensed by one or more of the states or jurisdictions of the United States, and the employees thereof;

(5) a public accountant licensed pursuant to the education law and the employees thereof;

(6) an employee of a governmental unit, agency or instrumentality who

advises or assists in the preparation of income tax returns in the performance of his or her official duties; or

(7) an agent enrolled to practice before the internal revenue service pursuant to section 10.4 of subpart A of part ten of title thirty-one of the code of federal regulations.

§ 7.

This act shall take effect immediately, provided, however, that section one of this act shall apply to authorized tax documents required to be filed for tax years beginning on or after January 1, 2009, and section two of this act shall apply to tax return preparers filing Personal income tax returns on or after December 31, 2009 and to tax return preparers who do not prepare income tax returns on or after December 31, 2010; and sections five and six of this act shall take effect on the same date as chapter 432 of the laws of 2008,takes effect.