

270C.445 TAX PREPARATION SERVICES.

Subdivision 1. **Scope.** This section applies to a person who provides tax preparation services.

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

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

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

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

(e) "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 done by another; or
- (3) offer or facilitate the provision of refund anticipation loans.

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

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

- (1) without good cause fail to promptly, diligently, and without unreasonable delay complete a client's tax return;
- (2) obtain the signature of a client to a tax return or authorizing document that contains blank spaces to be filled in after it has been signed;
- (3) fail to sign a client's tax return when payment for services rendered has been made;
- (4) 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;
- (5) fail to retain for at least four years a copy of individual income tax returns;
- (6) fail to maintain a confidential relationship between themselves and their clients or former clients;

(7) fail to take commercially reasonable measures to safeguard a client's nonpublic personal information;

(8) make, authorize, publish, disseminate, circulate, or cause to make, either directly or indirectly, any false, deceptive, or misleading statement or representation relating to or in connection with the offering or provision of tax preparation services;

(9) require a client to enter into a loan arrangement in order to complete a tax return;

(10) claim credits or deductions on a client's tax return for which the tax preparer knows or reasonably should know the taxpayer does not qualify;

(11) charge, offer to accept, or accept a fee based upon a percentage of an anticipated refund for tax preparation services;

(12) under any circumstances, withhold or fail to return to a client a document provided by the client for use in preparing the client's tax return.

Subd. 4. Required disclosures; refund anticipation loans. (a) If a tax preparer offers to make or facilitate a refund anticipation loan to the client, the preparer must make the disclosures in this subdivision. The disclosures must be made before or at the same time the preparer offers the refund anticipation loan to the client.

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

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

(2) the following verbatim statements:

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

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

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

(3) if the client is subject to additional interest when a refund is delayed, the following verbatim statement must 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."

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

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

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

(1) return preparation; and

(2) providing or facilitating a refund anticipation loan.

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

Subd. 6. **Enforcement; penalties.** The commissioner may impose an administrative penalty of not more than \$1,000 per violation of subdivision 3, 4, or 5. The commissioner may terminate a tax preparer's authority to transmit returns electronically to the state, if the commissioner determines the tax preparer engaged in a pattern and practice of violating this section. Imposition of a penalty under this subdivision is subject to the contested case procedure under chapter 14. The commissioner shall collect the penalty in the same manner as the income tax. Penalties imposed under this subdivision are public data.

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

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

Subd. 6c. **Exchange of data; commissioner.** The commissioner shall refer complaints about tax preparers who are alleged to have violated the provisions of subdivisions 3 to 5 to:

(1) the State Board of Accountancy, if the tax preparer is under its jurisdiction; and

(2) the Lawyers Board of Professional Responsibility, if the tax preparer is under its jurisdiction.

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

Subd. 7. **Enforcement; civil actions.** (a) Any violation of this section is an unfair, deceptive, and unlawful trade practice within the meaning of section 8.31.

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

(c) A district court finding for the plaintiff must award actual damages, including incidental and consequential damages, reasonable attorney fees, court costs, and any other equitable relief as the court considers appropriate.

Subd. 8. **Exemptions; enforcement provisions.** The provisions of this section, except for subdivision 4, do not apply to:

- (1) an attorney admitted to practice under section 481.01;
- (2) a certified public accountant or other person who is subject to the jurisdiction of the State Board of Accountancy;
- (3) an enrolled agent who has passed the special enrollment examination administered by the Internal Revenue Service;
- (4) any fiduciary, or the regular employees of a fiduciary, while acting on behalf of the fiduciary estate, the testator, trustor, grantor, or beneficiaries of them;
- (5) a tax preparer who provides tax preparation services for fewer than six clients in a calendar year;
- (6) tax preparation services to a spouse, parent, grandparent, child, or sibling of the tax preparer; and
- (7) the preparation by an employee of the tax return of the employee's employer.

History: 2005 c 151 art 1 s 54,116; art 9 s 2-9; 1Sp2005 c 3 art 11 s 4