

HOUSE RESEARCH

Bill Summary

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Overview

Extends disclosure requirements for refund anticipation loans (RALs) provided by tax preparers, and provides disclosure requirements for refund anticipation checks (RACs). Expands the list of actions which are prohibited for tax preparers. Requires written agreements for refund anticipation loans and checks. Authorizes clients to rescind RALs within one business day of entering an agreement. Extends the existing \$1,000 administrative penalty and private right of action to tax preparers who fail to provide written agreements for RALs and RACs and to tax preparers who fail to rescind RALs within one business day on request of the client. Increases civil damages available to plaintiffs to include two times tax preparation fees plus interest and fees for RALs.

Section

1 Tax preparation services.

Subdivision 1. Scope. Provides within the scope that the statute governing tax preparation does not apply to:

- a person who provides services to fewer than 10 clients per year;
- a person who provides services only to immediate family members;
- an employee who prepares the employer's return as part of his job;
- a fiduciary acting on behalf of an estate;
- nonprofit organizations providing services under IRS volunteer tax assistance programs.

With the exception of the nonprofit organizations, these individuals are exempt under current law under subdivision 8 of this section, relating to exemptions from the

statute. The changes to this subdivision move these exemptions to the scope subdivision, and increase the number of clients an individual may provide services for while remaining exempt from fewer than six to fewer than 10. [Note: since “tax preparation services” is defined as services for a fee or other consideration, nonprofit organizations participating in IRS volunteer programs are exempt under current law since they do not charge for their services.]

Subd. 2. Definitions. Adds definitions necessary for the disclosure requirements of this section to apply to refund anticipation checks and for the proposed requirement that disclosures be made in the client’s primary language, if the preparer advertises in that language. Current law imposes disclosure requirements on refund anticipation loans.

Subd. 3. Standards of conduct. Prohibits tax preparers from:

- Establishing an account to receive a client’s refund solely in the preparer’s name (makes an exception consistent with statute allowing taxpayers to assign K-12 credits to another party);
- Failing to act in the client’s best interests;
- Failing to safeguard and account for any money handled for the client;
- Failing to disclose material facts;
- Taking any action prohibited for collection agencies;
- Including in any agreement to provide tax preparation services a hold harmless clause, confession of judgment, waiver of a right to a jury trial, assignment of wages for services, provision preventing the client from asserting claims, waiver of any provision of statute relating to tax preparers, or waiver of the client’s right to relief;
- Failing to provide disclosures required under the federal Truth in Lending Act as part of offering refund anticipation loans.

Subd. 3a. Written agreements required; refund anticipation loans and checks. Requires refund anticipation loan and check agreements to be in writing and prohibits the loans and checks from requiring payment of any item other than tax preparation fees or other related fees and the anticipated refund amount that is advanced via the loan or check. If a RAL or RAC agreement includes a mandatory arbitration clause, requires a separate written notice that arbitration is the only means of dispute resolution, that the client has 30 days to opt out of the arbitration clause, and that the arbitration clause does not apply if the client’s dispute involves a violation on the part of the tax preparer or if the client pursues a civil action as provided in subdivision 7. Requires the preparer to notify the client orally and in writing of how to opt out of the arbitration clause.

Subd. 4. Required disclosures. Restructures the current subdivision 4, which requires disclosures for refund anticipation loans, to instead specify the format for disclosures for refund anticipation loans (which are provided in the proposed subdivision 4a) and disclosures for refund anticipation checks (which are provided in the proposed subdivision 4b). Disclosures for both kinds of advance payments of

refunds must be in writing on a single sheet of paper, and signed and dated by both the client and the tax preparer. These requirements are in current law with regard to refund anticipation loans; the changes to this section and the proposed subdivision 4b would extend the same requirements to refund anticipation checks. Also requires disclosures to be provided in the client's primary language, if the tax preparer advertises in that language.

Subd. 4a. Refund anticipation loan disclosures. Restates the disclosure requirements for refund anticipation loans that are stricken in subdivision 4 in the proposed subdivision 4a, with the following additions:

- Requires an explicit statement that the RAL is not the client's tax refund;
- Notifies the client of the right to cancel the RAL by returning the loan check or the amount of the loan in cash to the preparer within one business day.

Subd. 4b. Refund anticipation check disclosures. Provides disclosure requirements for refund anticipation checks, different from the requirements for refund anticipation loans. Statements required on the disclosure:

- The client is not required to purchase a RAC in order to get their tax refund
- The IRS can direct deposit the refund to the client's account within 8 to 15 days
- Clients who purchase a RAC will have access to their tax refund within 8 to 15 days
- the RAC is not a loan
- the cost of the RAC
- the option to the client of paying for the RAC at the time of filing or having it withheld from the refund
- that the cost of return preparation does not change if the client purchases a RAC

Also provides that preparers who offer products that meet the definition of a refund anticipation check but use a different product name must substitute the product name for the term 'RAC' in the required disclosure.

Subd. 5. Itemized bill required. Adds fees associated with a refund anticipation check to the list of items required to be itemized on the bill for tax preparation services.

Subd. 5b. Right to rescind refund anticipation loan. Authorizes clients to rescind a refund anticipation loan within one business day of entering an agreement by providing written notification to the preparer and either returning the check or conveying the same amount in cash to the preparer. Allows a tax preparer to charge a fee for rescinding a loan only if the preparer established an account at a financial institution to receive the refund and limits the fee to the amount the financial institution charged to open the account.

Subd. 6. Enforcement; penalties. Applies the existing \$1,000 administrative penalty in current law to violations of the new written agreement requirement and right to rescind loans proposed in subdivisions 3a and 5b. Provides that the

administrative penalty does not apply if the conduct is also subject to civil penalties under section 289A.60, including termination of the preparer's authorization to submit returns electronically.

Subds. 6a to 6c. Exchange of data. Extends the requirement that the commissioner of revenue, the State Board of Accountancy, and the Lawyers Board of Professional Responsibility exchange information about complaints they receive about accountants and lawyers who are preparers to apply to violations of proposed subdivisions 3a, 4a, and 5b.

Subd. 7. Enforcement; civil actions. Provides that an action taken by the attorney general to enforce this section of statute is in the public interest. Also expands the amount a court finding for a plaintiff must award to include statutory damages equal to tax preparation fees, interest and fees for refund anticipation loan, times two. Under present law, plaintiffs are awarded actual damages, attorney fees, court costs, and any other relief the court finds reasonable.

Subd. 8. Limited exemptions. Strikes exemptions for various classes of individuals who will still be exempt as a result of changes to subdivision 1. Provides that the proposed written agreement requirement in subdivision 3a and the proposed right to rescind refund anticipation loans in subdivision 5b apply to attorneys, certified public accountants, and enrolled agents. Provides a new exemption for employees and supervisors who assist people exempt under this subdivision in preparing returns.