

Ordinance No. 1398-16

AN EMERGENCY ORDINANCE

Council Member Brancatelli

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Chapter 660, Income Tax Preparers, Sections 660.01 through 660.07 and 660.99, to require information disclosure, a customer bill of rights, training, and registration in order to protect consumers seeking help preparing their taxes from sub-standard practices.

WHEREAS, the storefront income tax preparer industry, including Liberty Tax Service, H & R Block, and Jackson-Hewitt, prepares tax returns for millions of low and middle-income Americans; and

WHEREAS, income tax preparers are unregulated by federal statute and state law in Ohio; and

WHEREAS, some cities, including Chicago and New York City, and several states, including Maryland, New York, California, and Oregon regulate the income tax preparer industry; and

WHEREAS, a lack of educational credential and training requirements for preparers has led to preparation of incorrect returns and bad advise to customers, and a lack of best practices for fees and their disclosure have allowed excessively high fees without fee disclosure up front to customers; and

WHEREAS, the City of Cleveland recognizes the need to protect Cleveland consumers seeking help preparing their taxes from sub-standard practices by requiring tax preparers to obtain standardized testing, training, and certificates, disclose information regarding fee estimation and a customer bill of rights, and register by meeting minimum requirements; and

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of Cleveland, Ohio 1976, are supplemented by enacting new Chapter 660, Sections 660.01 through 660.07 and 660.99 as follows:

CHAPTER 660, INCOME TAX PREPARERS

Section 660.01 Definitions

- (a) "Assisted direct deposit" means a mechanism or agreement through which a consumer's individual income tax refund is deposited in a bank account other than the consumer's bank account, and then the remaining portion of the refund, minus fees, is deposited in the consumer's own bank account.
- (b) "Consumer" means a person for whom an individual income tax return is being prepared by a tax preparer.

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- (c) “Refund anticipation check” means a check or other payment mechanism representing the proceeds of the consumer’s individual income tax refund which was issued by a depository institution or other person that received a direct deposit of the consumer’s individual income tax refund and for which the consumer must pay a fee or other consideration.
- (d) “Refund anticipation loan” means any loan a consumer may receive against his anticipated individual income tax refund.
- (e) “Refund settlement product” means assisted direct deposit, a refund anticipation check, a refund anticipation loan, or other similar mechanism, agreement, or transaction that allows a consumer to receive an advancement of money against an anticipated individual income tax refund from a person other than state or federal government, or allows another person to collect fees from the proceeds of the consumer’s individual income tax refund.
- (f) “Tax preparation services” means advice or assistance in the preparation of individual income tax returns.
- (g) “Tax preparer” means a person who, for a fee, provides or who holds himself out as providing tax preparation services. A “tax preparer” shall not include:
 - (1) An attorney-at-law, and the employees of an attorney-at-law, who is a tax preparer;
 - (2) A certified public accountant, and the employees of a certified public accountant, who is a tax preparer;
 - (3) An enrolled agent, a federally-authorized tax practitioner who has technical expertise in the field of taxation and who is empowered by the U.S. Department of the Treasury to represent taxpayers before all administrative levels— examination, collection, and appeals—of the Internal Revenue Service;
 - (4) An officer or employee of a federal, state, or local governmental agency who provides tax preparation services in the scope of his employment; or
 - (5) An administrator, conservator, guardian, executor, trustee, receiver or other representative appointed by the court who provides tax preparation services in the scope of that appointment.

Section 660.02 Consumer bill of rights regarding tax preparation services

The Manager of Fair Housing and Consumer Affairs (“Manager”), under the direction of the Director of Community Development, shall produce a document in English and Spanish know as a “Consumer Bill of Rights Regarding Tax Preparation Services”. The document shall be written in plain language, published on the Community Development Department’s website, and shall contain the following information:

- (a) A detailed explanation of commonly offered tax preparation services;
- (b) A statement that a consumer has the right to file a complaint with the Manager concerning a tax preparer;
- (c) Information on how to file a complaint with the Manager concerning a tax preparer;
- (d) A statement that a consumer has the right to receive all of the information listed in Section 660.03 of this chapter from the tax preparer before the tax preparer renders any tax preparation services to the consumer;
- (e) A statement that a tax preparer, who individually or in conjunction with another, makes or offers to make a refund anticipation loan is required to make certain disclosures pursuant to Section 10 of the Tax Refund Anticipation Loan Disclosure Act, 815 ILCS 177/10; and

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- (f) A statement that a consumer is not required to utilize a refund settlement product in order to receive tax preparation services from the tax preparer.

Section 660.03 Mandatory disclosures

- (a) Prior to rendering any tax preparation services to a consumer, a tax preparer must provide the consumer with the following information, in writing:
 - (1) A copy of the Consumer Bill of Rights Regarding Tax Preparation Services, which the Manager shall make available on-line for the tax preparer to print and give to the consumer;
 - (2) A Disclosure Form that contains the following information:
 - A. A written list, description, and price of the tax preparation service offered by the tax preparer;
 - B. A written list, description, and price of all miscellaneous fees associated with tax preparation services, including filing fees and processing fees;
 - C. A written estimate of the total charge to the consumer based upon the tax preparation services the consumer has selected to purchase;
 - D. A written estimate of the period of time the consumer can reasonably expect to wait for his tax refund; and
 - E. A certification from the tax preparer indicating that the tax preparer has reviewed each disclosure with the consumer and that the tax preparer has verbally reviewed all the required disclosures with the consumer.
- (b) The Disclosure Form shall be written and approved annually by the Manager prior to any tax preparation services being rendered to any consumer. The Manager shall make such form available on-line for the tax preparer to print and give to the consumer.
- (c) The tax preparer must verbally review each and every disclosure contained on the Disclosure Form with the consumer before the tax preparer renders any tax preparation services to the consumer. No tax preparation services shall be rendered to any consumer until the tax preparer has reviewed the Disclosure Form with the consumer and has certified to such review on the Disclosure Form.
- (d) The tax preparer must offer the consumer the choice between English and Spanish versions of the Disclosure Form and must verbally review each and every disclosure in English or Spanish as appropriate.
- (e) If the consumer does not understand English or Spanish, the tax preparer must allow the consumer an opportunity to secure the services of a translator prior to continuing with the tax preparation service.

Section 660.04 Prohibited activity

No tax preparer shall require as a condition of offering or rendering tax preparation services to a consumer that the consumer utilize a refund settlement product.

Section 660.05 Certificate of Tax Preparer Registration

A tax preparer shall be registered and issued a Certificate of Tax Preparer Registration by the Commissioner of License and Assessments before the individual may provide individual tax preparation services in Cleveland.

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- (a) *Application for Certificate of Tax Preparer Registration.* An applicant for a Certificate of Tax Preparer Registration shall submit the application to the Commissioner of Assessments and Licenses on a form created and provided by the Manager of Fair Housing and Consumer Affairs (“Manager”), together with a fee in an amount set by the Board of Control.
- (b) *Registration Certificate Requirements and Issuance.* The Commissioner of Assessments and Licenses shall issue a Certificate of Registration only after the applicant meets the following requirements:
 - (1) The applicant shall be at least eighteen years old;
 - (2) The applicant shall possess a high school diploma or have passed an equivalency examination;
 - (3) The applicant shall complete the training requirements in accordance with division (c) and provide proof of completion; and
 - (4) The applicant shall pass an examination in accordance with division (c), and provide proof.
- (c) *Training and Examination.* The applicant shall complete the following training and examination requirements:
 - (1) The applicant shall complete the Basic Course Curriculum of individual tax preparer training administered by the Volunteer Income Tax Assistance program (VITA) or an equivalent, approved training provider identified by the Manager; and
 - (2) The applicant shall pass the test administered by VITA or an approved test provider identified by the Manger.
- (d) *Certificate Renewal.* A Certificate of Tax Preparer Registration shall be renewed one year from the date of the original certificate, upon the tax preparer submitting the following to the Commissioner of Licenses and Assessments:
 - (1) A renewal application provided by the Manager;
 - (2) A renewal fee in an amount set by the Board of Control; and
 - (3) Proof of completion of four hours of continuing education training administered by VITA or an approved continuing education provider identified by the Manager.
- (e) *Posting of Certificate.* A tax preparer shall post the required Certificate of Tax Preparer Registration conspicuously at all times at the main entrance of their place of business. If the certified tax preparer is an employee of a tax preparer business, the individual tax preparer employee shall post the required Certificate conspicuously at their work station. No tax preparer subject to the requirements of this Chapter shall fail to post the required Certificate.

Section 660.06 Joint and several liability

Any person who employs or contracts with another person to provide tax preparation services as a tax preparer for a consumer shall be jointly and severally liable with the tax preparer for any violations of this chapter.

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Section 660.07 Rules and Enforcement

The Manager of Fair Housing and Consumer Affairs (“Manager”), under the direction of the Director of Community Development shall enforce this Chapter, and shall promulgate any rules as may be necessary for the purposes of carrying out the provisions of this Chapter.

Section 660.99 Penalties

- (a) The City or any person aggrieved by a violation of this chapter may pursue the remedies authorized by Section 643.11 of this Code.
- (b) The remedies provided by division (a) of this section shall be the exclusive remedy available under this chapter. Whoever violates any provision of this chapter shall not be subject to the penalties provided in division (b) of Section 643.99.
- (c) The Commissioner of Assessments and Licenses may revoke any certificate issued under this Chapter on basis of a violation of this Chapter.

Section 2. That new Chapter 660, Sections 660.01 through 660.07 and 660.99 shall take effect thirty days after the effective date of this ordinance.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

jho 11-21-16 FOR: Council Member Brancatelli

