



House of Representatives

General Assembly

File No. 570

February Session, 2016

Substitute House Bill No. 5610

House of Representatives, April 11, 2016

The Committee on Government Administration and Elections reported through REP. JUTILA of the 37th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT REQUIRING THE LICENSING OF COMMERCIAL TAX PREPARERS AND FACILITATORS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2016*) As used in this section
2 and sections 2 to 16, inclusive, of this act:

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

6 (2) "Board" means the State Board of Tax Practitioners established in
7 section 2 of this act.

8 (3) "Certified public accountant" means an accountant licensed
9 pursuant to chapter 389 of the general statutes or a similar law of one
10 or more of the other states or jurisdictions of the United States.

11 (4) "Client" means an individual for whom a commercial tax

12 preparer, facilitator or commercial tax preparation business performs
13 or agrees to provide individual tax preparation services.

14 (5) "Commercial tax preparer" means a tax preparer who: (A)
15 Prepared ten or more returns for compensation in the preceding
16 calendar year and will prepare at least one return for compensation
17 during the current calendar year; or (B) prepared at least one, but
18 fewer than ten, returns for compensation in the preceding calendar
19 year but will prepare ten or more returns for compensation for the
20 current calendar year.

21 (6) "Tax preparer" means an individual who prepares a substantial
22 portion of any return for compensation, and includes a commercial tax
23 preparer who prepares returns for clients of such preparer. "Tax
24 preparer" does not include any person listed in section 13 of this act.

25 (7) "Commercial tax return preparation business" means an entity
26 that employs commercial tax preparers.

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

29 (9) "Enrolled agent" means an agent enrolled to practice before the
30 United States Internal Revenue Service pursuant to 31 CFR 10.4,
31 subpart A.

32 (10) "Facilitator" means a person who individually or in conjunction
33 or cooperation with another person: (A) Solicits the execution of,
34 processes, receives or accepts an application or agreement for a refund
35 anticipation loan or refund anticipation check; (B) serves or collects
36 upon a refund anticipation loan or refund anticipation check; or (C) in
37 any other manner, facilitates the making of a refund anticipation loan
38 or refund anticipation check. "Facilitator" does not include any
39 employee of a facilitator who provides only clerical or other
40 comparable support services to such facilitator.

41 (11) "In good standing", with respect to an individual, means that
42 the individual has not engaged in conduct that would justify censure,

43 suspension or disbarment from practice.

44 (12) "Provide individual tax preparation services" means to prepare,
45 advise or assist in the preparation of, or to assume final responsibility
46 for, another person's preparation of a federal or state income tax return
47 of another person for valuable consideration.

48 (13) "Refund anticipation check" means a check, stored value card or
49 other payment mechanism that: (A) Represents the proceeds of a tax
50 refund; (B) is issued by a bank or other person that received a direct
51 deposit of the tax refund or tax credits; and (C) is paid for by a fee or
52 other consideration.

53 (14) "Refund anticipation loan" means a loan that is secured by or
54 that the creditor arranges to be repaid directly or indirectly from the
55 proceeds of an income tax refund or tax credits. "Refund anticipation
56 loan" also includes any sale, assignment or purchase of tax refund at a
57 discount or for a fee, whether or not the amount is required to be
58 repaid to the buyer or assignee if the United States Internal Revenue
59 Service or the Department of Revenue Services denies or reduces the
60 amount of the tax refund.

61 (15) "License" means, unless the context requires otherwise, an
62 authorization issued by the board to provide individual tax
63 preparation services.

64 (16) "Return" means a return or report relating to a tax administered
65 by the United States Internal Revenue Service or Department of
66 Revenue Services.

67 Sec. 2. (NEW) (*Effective October 1, 2016*) (a) There is established a
68 State Board of Tax Practitioners, within the Office of the Secretary of
69 the State, which shall consist of eight members, to be appointed by the
70 Governor in consultation with the Secretary of the State. All members
71 of the board shall be residents of this state. The Governor shall select a
72 chairperson for the board. The term of each member of the board shall
73 be coterminous with that of the Governor. Vacancies occurring during

74 a term shall be filled by appointment by the Governor for the
75 unexpired portion of the term. Upon the expiration of a member's term
76 of office, such member shall continue to serve until a successor has
77 been appointed. Any member of the board whose professional license
78 is revoked or suspended shall automatically cease to be a member of
79 the board. No person who has served two successive complete terms
80 shall be eligible for reappointment to the board. An appointment to fill
81 an unexpired term shall not be considered to be a complete term. Any
82 member who, without just cause, fails to attend fifty per cent of all
83 meetings held during any calendar year shall not be eligible for
84 reappointment.

85 (b) The board shall consist of eight members, of which seven have at
86 least five years of experience as a tax preparer and one of whom is a
87 member of a nonprofit tax program or nonprofit consumer advocate
88 program. The members of the board may also include, but need not be
89 limited to, representatives of the following groups: (1) A member of a
90 nonprofit tax program or nonprofit consumer advocate program; (2) a
91 commercial tax preparer who has been in practice in this state for more
92 than ten years and has at least two hundred employees; (3) a member
93 of the Connecticut Association of Certified Public Accountants; (4) a
94 member of the Connecticut Society of Public Accountants; (5) a
95 member of the Connecticut Bar Association; and (6) a member of the
96 National Association of Enrolled Agents.

97 (c) The board shall meet at such times and places as may be fixed by
98 the board and shall meet at least once in every quarter of a calendar
99 year. A majority of the board members then serving shall constitute a
100 quorum at any meeting. The board shall have a seal which shall be
101 judicially noticed. The board shall maintain a registry of the names and
102 addresses of all licensees, and shall annually publish a directory of all
103 licensees. The board shall have responsibility for the administration
104 and enforcement of the provisions of this section and sections 3 to 16,
105 inclusive, of this act.

106 (d) Each member of the board shall be reimbursed for his or her

107 actual and necessary expenses incurred in the discharge of such
108 member's official duties.

109 (e) The board may recommend and the Secretary of the State may
110 employ, subject to the provisions of chapter 67 of the general statutes,
111 such personnel as may be necessary to carry out the provisions of this
112 section, section 1 of this act and sections 3 to 16, inclusive, of this act.
113 The board may enter into such contractual agreements as may be
114 necessary for the discharge of its duties, within the limit of its
115 appropriated funds and in accordance with established procedures, as
116 it deems necessary in its administration and enforcement of said
117 sections. The board may appoint committees or persons to advise or
118 assist the board in such administration and enforcement.

119 (f) The board shall issue licenses to commercial tax preparers and
120 facilitators. The board may take any action that is necessary and
121 proper to effectuate the purposes of sections 1 to 16, inclusive of this
122 act, including the power to issue subpoenas to compel the attendance
123 of witnesses and the production of documents; to administer oaths; to
124 take testimony and to receive evidence concerning all matters within
125 its jurisdiction. If any person fails to comply with a subpoena issued by
126 the board, the board may apply to the Superior Court for an order
127 requiring the attendance and testimony of witnesses and the
128 production of documentary evidence. The board, its members, and its
129 agents shall be immune from personal liability for actions taken in
130 good faith in the discharge of the board's responsibilities, and the state
131 shall indemnify and hold harmless the board, its members, and its
132 agents from all costs, damages and attorneys' fees arising from claims
133 and suits against them with respect to matters to which such immunity
134 applies.

135 Sec. 3. (NEW) (*Effective October 1, 2016*) (a) The State Board of Tax
136 Practitioners shall have the following powers and all associated
137 powers necessary or proper to carry the granted powers into effect:

138 (1) To determine qualifications of applicants for licensing as a
139 commercial tax preparer or facilitator in this state;

- 140 (2) To cause examinations to be prepared, conducted and graded;
- 141 (3) To issue licenses to qualified applicants upon their compliance
142 with the rules of the board;
- 143 (4) To restore the license of any commercial tax preparer or
144 facilitator whose license has been suspended or revoked. Such
145 restoration may be: (A) At a time certain; or (B) when the person
146 subject to suspension fulfills any conditions for reissuance set by the
147 board;
- 148 (5) To investigate alleged violations of this section and sections 4 to
149 16, inclusive, of this act or any regulation or order adopted thereunder;
- 150 (6) To enforce the provisions of this section and sections 4 to 16,
151 inclusive, of this act and to exercise general supervision over each
152 commercial tax preparer and facilitator practice;
- 153 (7) To issue a cease and desist order in accordance with section 15 of
154 this act;
- 155 (8) To assess civil penalties if the board has reason to believe that a
156 person has been engaged or is engaging in any violation of this section
157 or sections 4 to 16, inclusive, of this act or any regulation or order
158 adopted thereunder;
- 159 (9) To formulate a code of professional conduct for commercial tax
160 preparers and facilitators;
- 161 (10) To assess against the licensee or any other person found guilty
162 of violating any of the provisions of this section or sections 4 to 16,
163 inclusive, of this act or any regulation or order adopted thereunder, in
164 addition to any other sanctions, the costs associated with the
165 disciplinary or other action taken by the board;
- 166 (11) To order any person who has engaged in or is engaging in any
167 violation of this section or sections 4 to 16, inclusive, of this act or any
168 regulation or order adopted thereunder, to rescind and pay restitution

169 to anyone harmed by the violation who seeks rescission; and

170 (12) To adopt regulations, in accordance with the provisions of
171 chapter 54 of the general statutes, to implement the provisions of
172 sections 1 to 16, inclusive, of this act.

173 (b) The power of the board to restore a license pursuant to
174 subdivision (4) of subsection (a) of this section includes the power to
175 restore a license suspended or revoked due to conviction of a crime. In
176 making a determination to restore a license, the board shall consider
177 the relationship of the facts that supported the conviction to the code
178 of professional conduct, if any, and all intervening circumstances in
179 determining the fitness of the person to receive or hold a commercial
180 tax preparer's or facilitator's license.

181 (c) The board may keep personal financial information gathered
182 pursuant to an investigation by the board confidential after a final
183 decision of the board, unless disclosure is considered necessary by the
184 board for the investigation or prosecution of an alleged violation of
185 sections 1 to 16, inclusive, of this act, or any regulation or order
186 adopted thereunder. For the purposes of this subsection, "personal
187 financial information" includes, but is not limited to, tax returns.

188 Sec. 4. (NEW) (*Effective October 1, 2016*) (a) Except as provided in
189 section 13 of this act, on and after October 1, 2016, no person shall
190 engage in the business of, solicit business as or make representations to
191 be or advertise as providing individual tax preparation services
192 without obtaining a commercial tax preparer or facilitator license from
193 the board. Each applicant for a license as a commercial tax preparer or
194 facilitator shall, at a minimum, satisfy the following requirements in
195 order to qualify for a license:

196 (1) Be eighteen years of age or older;

197 (2) Possess a high school diploma or have passed an equivalency
198 examination; and

199 (3) Present evidence satisfactory to the State Board of Tax

200 Practitioners that the applicant has successfully completed at least
201 seventy hours in basic personal income tax law, theory and practice at
202 a professional training session or educational institution approved by
203 the board.

204 (b) In addition to the requirements of subsection (a) of this section,
205 each applicant for a license as a commercial tax preparer or facilitator
206 shall pass an examination to the satisfaction of the board. The
207 examination shall be prepared in a manner that, in the judgment of the
208 board, measures the applicant's knowledge of Connecticut and federal
209 personal income tax law, theory and practice. In order to obtain a
210 facilitator's license, the examination shall be of a more exacting nature
211 and require higher standards of knowledge of Connecticut and federal
212 personal income tax law, theory and practice than the examination for
213 a commercial tax preparer's license.

214 (c) In addition to the requirements of subsections (a) and (b) of this
215 section, each applicant for a license as a commercial tax preparer or
216 facilitator shall present evidence satisfactory to the board of active
217 employment, as a commercial tax preparer or facilitator or
218 employment in this or another state in a capacity that is, in the
219 judgment of the board, equivalent to that of a commercial tax preparer
220 or facilitator, for not less than a cumulative total of one thousand one
221 hundred hours during at least two of the last five years. The board
222 may accept evidence that the applicant was employed as a commercial
223 tax preparer under supervision for the period indicated in a certificate
224 issued by another state to be satisfactory evidence of the applicant's
225 employment as a commercial tax preparer for the period indicated. If
226 an applicant has worked less than a cumulative total of one thousand
227 one hundred hours in at least two of the last five years, the board may
228 consider the number of hours worked, the number of years worked,
229 the number of tax returns prepared and whether the work involved
230 contributed directly to the professional competence of the individual
231 in determining if a commercial tax preparer or facilitator has met the
232 work experience requirement.

233 (d) If, in the judgment of the board, an applicant has, in
234 combination, the education and experience to qualify for a commercial
235 tax preparer's or facilitator's license, but does not meet or cannot
236 present evidence of strict compliance with the requirements of
237 subdivision (3) of subsection (a) of this section or subsection (c) of this
238 section, the board may allow some of the applicant's education or
239 experience to substitute for the other requirement. The provisions of
240 this subsection shall not be construed to allow a waiver of, or
241 substitution for, any qualifications required for a commercial tax
242 preparer's or facilitator's license.

243 (e) The initial application fee for a facilitator's license shall be fifty
244 dollars and such license shall be renewable annually for a fee of one
245 hundred dollars. The initial application fee for a commercial tax
246 preparer's license shall be one hundred dollars, and such license shall
247 be renewable annually for a fee of one hundred dollars. Any licensing
248 fee shall be paid by a means to be determined by the board.

249 Sec. 5. (NEW) (*Effective October 1, 2016*) The State Board of Tax
250 Practitioners may issue a license to an applicant for a license as a
251 commercial tax preparer or facilitator who: (1) Presents evidence
252 satisfactory to the board that the applicant is licensed as a commercial
253 tax preparer or facilitator in a state that has requirements for licensing
254 substantially similar to the requirements for licensing in this state; and
255 (2) has passed to the satisfaction of the board an examination covering
256 Connecticut and federal personal income tax law, theory and practice.

257 Sec. 6. (NEW) (*Effective October 1, 2016*) (a) Each commercial tax
258 preparer or facilitator, who will provide individual tax preparation
259 services in a calendar year, shall apply electronically for a license for
260 that calendar year, in accordance with rules prescribed by the board.

261 (b) Upon completion of the licensing process, as set forth in section 4
262 of this act, each qualified commercial tax preparer and facilitator shall
263 be issued a commercial tax preparer or facilitator license. If an
264 individual acts as both a commercial tax preparer and a facilitator, one
265 license shall indicate licensure as both a commercial tax preparer and a

266 facilitator.

267 (c) In accordance with rules prescribed by the board, each
268 commercial tax preparer and facilitator shall be assigned a unique
269 identification number that shall be used by the commercial tax
270 preparer and facilitator on each return that the commercial tax
271 preparer is required to sign and each refund anticipation loan and
272 refund anticipation check the facilitator is required to sign.

273 (d) If a commercial tax preparer or facilitator is an employee or
274 prospective employee of a commercial tax return preparation business
275 or a facilitator, the commercial tax return preparation business or
276 facilitator shall ensure that the employee is properly licensed with the
277 board and possesses a valid commercial tax preparer or facilitator
278 license or the prospective employee is properly licensed with the board
279 and possesses a valid commercial tax preparer or facilitator license
280 prior to employing such prospective employee.

281 (e) Each licensed commercial tax preparer and facilitator shall
282 electronically renew his or her license with the board annually, in
283 accordance with instructions prescribed by the board. If, at any time
284 during the year following licensing or renewal, as applicable, any
285 information provided by the commercial tax preparer or facilitator
286 upon licensing or renewal is no longer correct, the commercial tax
287 preparer or facilitator shall update his or her information in
288 accordance with instructions prescribed by the State Board of Tax
289 Practitioners.

290 (f) The issuance of a commercial tax preparer or facilitator license to
291 provide tax preparation services or refund anticipation loan services is
292 not, and shall not be advertised as, an endorsement by the board, or
293 his or her qualifications or the services rendered by him or her.

294 (g) A commercial tax preparer who has not applied for a license
295 with the board or who has not paid the required licensing fee shall not
296 represent his or her clients before the Department of Revenue Services.

297 (h) If a commercial tax preparer or facilitator is required to apply for
298 a license or license renewal with the board pursuant to this section and
299 fails to comply with the requirements of this section, the commercial
300 tax preparer or facilitator shall pay a penalty of twenty-five dollars for
301 each month without a license for a maximum of three hundred dollars
302 per calendar year. The board may waive such penalty for good cause
303 shown by the commercial tax preparer or facilitator.

304 Sec. 7. (NEW) (*Effective October 1, 2016*) The State Board of Tax
305 Practitioners shall adopt regulations, in accordance with the provisions
306 of chapter 54 of the general statutes, to establish reasonable fees for:

- 307 (1) Application for examination for a facilitator's license;
- 308 (2) Application for examination for a commercial tax preparer's
309 license;
- 310 (3) Issuance or renewal of a facilitator's inactive license;
- 311 (4) Issuance or renewal of a commercial tax preparer's inactive
312 license;
- 313 (5) Reactivation of a facilitator's inactive license or reactivation of a
314 commercial tax preparer's inactive license;
- 315 (6) Restoration of lapsed licenses;
- 316 (7) Issuance or replacement of a duplicate license; and
- 317 (8) Issuance or renewal of a combined facilitator's or commercial tax
318 preparer's license for a sole proprietorship, partnership, corporation or
319 other legal entity. The board shall determine eligibility for a combined
320 license under regulations adopted by the board in accordance with
321 chapter 54 of the general statutes.

322 Sec. 8. (NEW) (*Effective October 1, 2016*) Prior to providing any
323 individual tax preparation services, a licensed commercial tax preparer
324 shall provide the client with a written disclosure consisting of:

325 (1) The commercial tax preparer's name, address and telephone
326 number;

327 (2) A statement that the commercial tax preparer is not a certified
328 public accountant, an enrolled agent or a tax attorney;

329 (3) A list or description of the services that the commercial tax
330 preparer is qualified to provide;

331 (4) The commercial tax preparer's education and training, including
332 examinations taken and successfully passed; and

333 (5) The fees charged for individual tax preparation services that
334 contains the following information: (A) A list of, description of, and
335 the fee for each tax preparation service offered by the commercial tax
336 preparer, including fees for the preparation of individual forms; (B) a
337 list of, a description of, and the price of all miscellaneous fees
338 associated with the commercial tax preparer's tax preparation services,
339 including filing fees and processing fees; and (C) an estimate of the
340 total charge to the client based upon the tax preparation services the
341 client has selected to purchase.

342 Sec. 9. (NEW) (*Effective October 1, 2016*) (a) A commercial tax
343 preparer or facilitator shall not:

344 (1) Charge or impose any fee, charge or other consideration in the
345 making or facilitating of a refund anticipation loan or refund
346 anticipation check apart from the fee charged by the creditor or bank
347 that provided the loan or check;

348 (2) Engage in unfair or deceptive acts or practices in the facilitating
349 of a refund anticipation check or a refund anticipation loan, including
350 making any oral statements contradicting any of the information
351 required to be disclosed under the Taxpayer Bill of Rights, as set forth
352 in the Internal Revenue Code of 1986, or any subsequent
353 corresponding internal revenue code of the United States, as amended
354 from time to time;

355 (3) Directly or indirectly arrange for a third party to impose any
356 interest, fee or charge related to a refund anticipation loan or refund
357 anticipation check;

358 (4) Include any of the following provisions in any documents
359 provided or signed to obtain a refund anticipation loan or refund
360 anticipation check, including the loan application or agreement: (A) A
361 hold harmless clause; (B) a confession of judgment clause; (C) a waiver
362 of the right to a jury trial; (D) any assignment of or order for payment
363 of wages or other compensation for services; (E) a waiver of any
364 provision of the Taxpayer Bill of Rights, as set forth in the Internal
365 Revenue Code of 1986, or any subsequent corresponding internal
366 revenue code of the United States, as amended from time to time; or
367 (F) a waiver of the right to injunctive, declaratory, other equitable
368 relief, or relief on a class-wide basis. Any such provisions shall be
369 deemed void;

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

373 (6) Directly or indirectly, individually or in conjunction or
374 cooperation with another person, engage in the collection of an
375 outstanding or delinquent refund anticipation loan for any creditor,
376 bank or assignee;

377 (7) Make a misrepresentation of fact in obtaining or attempting to
378 obtain a license;

379 (8) Fail or refuse to give a client, for the client's own records, a copy
380 of any document requiring the client's signature, within a reasonable
381 time after the client signs the document;

382 (9) Fail to maintain a copy of any tax return prepared for a client for
383 four years from the date of completion or the due date of the return,
384 whichever is later;

385 (10) Knowingly give false or misleading information to a client,

386 surety company or the board; or

387 (11) Engage in any other act prohibited by regulations adopted by
388 the State Board of Tax Practitioners, in accordance with the provisions
389 of chapter 54 of the general statutes.

390 (b) Any commercial tax preparer or facilitator who violates any of
391 the provisions of subsection (a) of this section shall be subject to a civil
392 penalty of not more than two thousand five hundred dollars for each
393 such violation.

394 (c) If a commercial tax preparer fails to sign his or her name to any
395 return that requires the commercial tax preparer's signature, or a
396 facilitator fails to sign his or her name to any refund anticipation loan
397 or refund anticipation check facilitation documentation, such
398 commercial tax preparer or facilitator shall be subject to a civil penalty
399 of two hundred twenty-five dollars for each failure to so sign, up to a
400 maximum of two thousand five hundred dollars per calendar year. For
401 any such violation in a subsequent calendar year, the commercial tax
402 preparer or facilitator shall be subject to a civil penalty of five hundred
403 dollars for each failure to so sign, with no maximum penalty.

404 (d) Any commercial tax preparer or facilitator who fails to include
405 the unique identification number assigned by the board on any return,
406 or on any return anticipation loan or return anticipation check
407 facilitation documentation that requires his or her signature, shall be
408 subject to a penalty of one hundred dollars for each such failure, up to
409 a maximum of two thousand five hundred dollars per calendar year.
410 For any violation in a subsequent calendar year, the commercial tax
411 preparer or facilitator shall be subject to a civil penalty of two hundred
412 twenty-five dollars for each such failure, with no maximum penalty.

413 (e) Any commercial tax preparer, facilitator or commercial tax
414 return preparation business that employs an individual to prepare tax
415 returns who is not licensed by the board shall be subject to a civil
416 penalty of five hundred dollars per violation.

417 (f) The board may waive any penalty imposed under this section for
418 good cause shown by the commercial tax preparer, facilitator or
419 commercial tax return preparation business.

420 Sec. 10. (NEW) (*Effective October 1, 2016*) (a) It shall constitute a
421 violation of sections 1 to 16, inclusive, of this act and grounds for the
422 State Board of Tax Practitioners to deny an application for a license or
423 discipline a licensee if a commercial tax preparer or facilitator engages
424 in any of the following:

425 (1) Unprofessional conduct, which may include, but need not be
426 limited to, conduct that resulted in the denial of licensure, certificate,
427 permit, or registration, or revocation, suspension, restriction, or any
428 other disciplinary action against an applicant or licensee by the federal
429 government or another state or territory of the United States, by any
430 other government agency, or by another professional licensing board
431 or organization. A certified copy of the decision, order or judgment
432 shall be conclusive evidence of such conduct.

433 (2) Procuring or attempting to procure a license by fraud,
434 misrepresentation or mistake.

435 (3) Violating or attempting to violate, directly or indirectly, or
436 assisting in or abetting the violation of, or conspiring to violate, any
437 provision or term of this section, sections 1 to 16, inclusive, of this act
438 or any regulation adopted by the State Board of Tax Practitioners.

439 (4) Conviction of any felony or misdemeanor that is substantially
440 related to the qualifications, functions or duties of a licensee, in which
441 event the record of the conviction shall be conclusive evidence of the
442 crime.

443 (5) Impersonating an applicant or acting as a proxy for an applicant
444 in any situation or examination referred to under sections 1 to 16,
445 inclusive, of this act for the issuance of a license.

446 (6) Impersonating a licensee, or permitting or allowing an
447 unlicensed person to use a license.

448 (7) Committing any fraudulent, dishonest or corrupt act that is
449 substantially related to the qualifications, functions or duties of a
450 licensee.

451 (b) Each violation of subsection (a) of this section shall be a separate
452 and distinct offense.

453 (c) In addition to the powers set forth in section 3 of this act, the
454 State Board of Tax Practitioners may discipline a licensee by any, or a
455 combination, of the following methods:

456 (1) Placing the licensee on probation.

457 (2) Suspending the license and the rights conferred by sections 1 to
458 16, inclusive, of this act on a licensee for a period not to exceed one
459 year.

460 (3) Revoking the license.

461 (4) Suspending or staying the disciplinary order, or portions of it,
462 with or without conditions.

463 (5) Taking other action as the State Board of Tax Practitioners deems
464 proper, as authorized by this section, sections 1 to 16, inclusive, of this
465 act or any regulations adopted under said sections.

466 (d) The State Board of Tax Practitioners may issue an initial license
467 on probation, with specific terms and conditions, to any applicant.

468 (e) If a license is suspended or revoked, the State Board of Tax
469 Practitioners shall notify the federal Internal Revenue Service and the
470 Department of Revenue Services.

471 Sec. 11. (NEW) (*Effective October 1, 2016*) (a) Except as provided in
472 subsection (b) of this section, upon the annual renewal of a commercial
473 tax preparer's or facilitator's license, each licensee shall submit
474 evidence satisfactory to the State Board of Tax Practitioners that the
475 person has completed at least twenty hours of instruction or seminars
476 in subjects related to income tax preparation since the granting of the

477 initial license or the preceding license renewal date, as applicable. If
478 the board does not receive evidence that the continuing education
479 requirement has been completed by the applicant, the board shall not
480 renew the applicant's license.

481 (b) The board may exempt a commercial tax preparer or facilitator
482 from the continuing education required under this section upon
483 application showing evidence satisfactory to the board of an inability
484 to comply because of unusual or extenuating circumstances, including
485 medical reason, military duty or other good cause to be approved by
486 the board.

487 Sec. 12. (NEW) (*Effective October 1, 2016*) (a) Whenever a commercial
488 tax preparer or facilitator ceases to engage in the preparation of or in
489 advising or assisting in the preparation of personal income tax returns,
490 such commercial tax preparer or facilitator may apply to the State
491 Board of Tax Practitioners for inactive status. A license that is granted
492 inactive status may be renewed upon payment of the applicable license
493 fee. The continuing education required under section 11 of this act
494 shall not be applicable for the renewal of an inactive license.

495 (b) A license in inactive status may be reactivated upon payment of
496 a reactivation fee, that shall be provided upon proof of compliance
497 with such continuing education requirements as may be adopted by
498 the board by regulations adopted in accordance with chapter 54 of the
499 general statutes.

500 (c) A license in inactive status may be revoked or suspended by the
501 board when conditions exist under which the board would have been
502 authorized to revoke or suspend the license if it were active.

503 (d) No person whose license is inactive shall act as a commercial tax
504 preparer or facilitator.

505 Sec. 13. (NEW) (*Effective October 1, 2016*) The following individuals
506 are exempt from the requirements of sections 1 to 16, inclusive, of this
507 act:

508 (1) An individual in good standing with an active license issued by
509 the Connecticut State Board of Accountancy;

510 (2) An individual in good standing and admitted to practice law in
511 this state or in another state, and employees of attorneys, or firms
512 thereof preparing returns under the supervision of such attorneys;

513 (3) An individual employed by a local, state or federal
514 governmental agency but only in performance of his or her official
515 duties;

516 (4) An individual enrolled to practice before the Internal Revenue
517 Service who is governed under Circular 230;

518 (5) An individual serving as an employee of or assistant to a
519 commercial tax preparer or an individual exempted under this section
520 in the performance of official duties for the commercial tax preparer or
521 the individual exempted under this section;

522 (6) Any full-time or part-time employee hired to fill a permanent
523 position, in connection with the duties as an employee who has the
524 incidental duty of preparing income tax returns for the business of the
525 employer only;

526 (7) While acting as such, any fiduciary, or the regular employees
527 thereof, acting on behalf of the fiduciary estate, the testator, grantor or
528 beneficiaries thereof;

529 (8) A certified public accountant that holds an active firm permit or
530 license issued by any state, a public accountant holding a valid permit
531 issued under a public accounting firm registered in any state and
532 employees of any such public accountant or firms thereof preparing
533 returns under the supervision of such public accountants; and

534 (9) Internal Revenue Services qualified tax preparers, including, but
535 not limited to, tax preparers of the Volunteer Income Tax Association
536 and Tax Counseling for the Elderly.

537 Sec. 14. (NEW) (*Effective October 1, 2016*) (a) Any person who
538 violates any provision of this section, sections 1 to 16, inclusive, of this
539 act, in addition to any other penalty provided by said sections, may be
540 subject to a civil penalty of not more than two thousand five hundred
541 dollars for each violation. The amount of the penalty shall be
542 determined by the State Board of Tax Practitioners after taking into
543 consideration the seriousness of the violation, any prior violation by
544 the person of any of said sections or of any of the regulations adopted
545 by the board and other considerations as the board considers
546 appropriate. Any penalty under sections 1 to 16, inclusive, of this act
547 shall be assessed after notice and hearing in accordance with chapter
548 54 of the general statutes.

549 (b) All penalties recovered under this section shall be deposited in
550 the General Fund. In addition to any other action the State Board of
551 Tax Practitioners may take, the board may require successful
552 participation and completion of an educational program specified by
553 the board as a condition for the reissuance, restoration, retention or
554 renewal of the commercial tax preparer's or facilitator's license.

555 Sec. 15. (NEW) (*Effective October 1, 2016*) (a) The Board of State Tax
556 Practitioners may issue an order requiring a person to cease and desist
557 from any violation or threatened violation of sections 1 to 16, inclusive,
558 of this act or any regulation or order adopted thereunder, if the board
559 has reason to believe that such person has been engaged, is engaging
560 or is about to engage in any violation of said sections, or any
561 regulation or order adopted thereunder. Upon issuance of a cease and
562 desist order, the board shall promptly serve notice of the cease and
563 desist order upon the person engaging in or about to engage in such
564 violation. Such notice shall state that a hearing will be held on the
565 cease and desist order if the recipient of the order files a written
566 request for a hearing with the board not later than twenty days after
567 the date of service of the cease and desist order.

568 (b) If a timely request for a hearing is filed under subsection (a) of
569 this section, the board shall hold a contested case hearing, in

570 accordance with the provisions of chapter 54 of the general statutes, on
 571 such cease and desist order. If a contested case hearing is held, the civil
 572 penalties assessed pursuant to the cease and desist order shall be
 573 suspended until issuance of a final decision, but the remaining
 574 provisions of the cease and desist order shall remain in full force and
 575 effect until issuance of the final decision.

576 (c) After the hearing, the board shall enter a final decision vacating,
 577 modifying or affirming the cease and desist order. Any person
 578 aggrieved by the final decision of the board pursuant to a contested
 579 case hearing may appeal such decision in accordance with the
 580 provisions of section 4-183 of the general statutes.

581 (d) Any judicial review of a cease and desist order under subsection
 582 (c) of this section shall not bar the board from thereafter vacating or
 583 modifying a cease and desist order involved in the proceeding for
 584 review, or entering any new order, for a proper cause that was not
 585 decided by the reviewing court.

586 (e) The board may apply to the Superior Court for injunctive relief if
 587 a person fails to comply with a cease and desist order after receiving
 588 notice pursuant to subsection (a) of this section.

589 Sec. 16. (NEW) (*Effective October 1, 2016*) A violation of the
 590 provisions of sections 1 to 15, inclusive, of this act shall be deemed to
 591 be an unfair trade practice within the provisions of chapter 735a of the
 592 general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	New section
Sec. 2	<i>October 1, 2016</i>	New section
Sec. 3	<i>October 1, 2016</i>	New section
Sec. 4	<i>October 1, 2016</i>	New section
Sec. 5	<i>October 1, 2016</i>	New section
Sec. 6	<i>October 1, 2016</i>	New section
Sec. 7	<i>October 1, 2016</i>	New section

Sec. 8	October 1, 2016	New section
Sec. 9	October 1, 2016	New section
Sec. 10	October 1, 2016	New section
Sec. 11	October 1, 2016	New section
Sec. 12	October 1, 2016	New section
Sec. 13	October 1, 2016	New section
Sec. 14	October 1, 2016	New section
Sec. 15	October 1, 2016	New section
Sec. 16	October 1, 2016	New section

Statement of Legislative Commissioners:

In Section 1(4), "commercial tax preparation business" was added for consistency, in Section 1(5) references to "compensation" and "at least one" and were added for consistency, in Section 2(c) "this section" was added for consistency, in Sections 2(f), 3(a)(4), 4(a), (c) and (d), 6(b), (d) and (f), 10(a), 14 and 15(b), (c) and (e) were rephrased for clarity and consistency, in Section 5 "federal" was added for consistency, Section 6(f) was deleted as duplicative and in Section 9(d) "for each such failure" was added for clarity.

GAE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Secretary of the State	GF - Cost	150,000	130,000
State Comptroller - Fringe Benefits ¹	GF - Cost	51,000	51,000
Resources of the General Fund	GF - Revenue Gain	200,000	200,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill creates a State Board of Tax Practitioners to issue licenses and enforce licensing requirements for commercial tax preparers and facilitators. The Secretary of the State will incur FY 17 costs of \$130,000 to hire two positions (plus associated fringe benefits costs of \$51,000) and \$20,000 in one-time startup costs. The two new positions would be responsible for registration, licensure, continuing education, renewal, disclosure, and enforcement for non-credentialed commercial tax preparers. The bill creates an annual \$100 commercial tax preparer license fee. Based on an estimated 2,000 licenses issued, \$200,000 in revenue would be generated in FY 17.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 39.94% of payroll in FY 17 and FY 18.

OLR Bill Analysis

sHB 5610

AN ACT REQUIRING THE LICENSING OF COMMERCIAL TAX PREPARERS AND FACILITATORS.

SUMMARY:

This bill (1) establishes an eight-member State Board of Tax Practitioners within the Office of the Secretary of the State to license commercial tax preparers and facilitators and (2) generally prohibits a person from providing individual tax preparation services without the license. Among other things, the bill does the following:

1. gives the board various powers relating to tax preparer licensing, including broad investigatory and enforcement powers;
2. sets qualifications and other requirements for obtaining, renewing, restoring, or reactivating a commercial tax preparer or facilitator license;
3. exempts certain individuals from the licensure requirements, including licensed accountants, attorneys, and tax preparers qualified by the federal Internal Revenue Service (IRS);
4. requires the board to adopt regulations setting reasonable fees for license examinations and licenses;
5. requires tax preparers to provide prospective clients with a written disclosure listing, among other things, the applicable fees and including a statement that the tax preparer is not a certified public accountant (CPA), enrolled agent, or attorney;
6. establishes several prohibited practices for commercial tax preparers and facilitators and subjects violators of these, or any

other provisions, to penalties and enforcement actions by the board;

7. authorizes the board to deny, suspend, revoke, and restore licenses;
8. subjects violators to various civil penalties, including a penalty of up to \$2,500 for any violation of the bill's provisions and deems such a violation an unfair trade practice; and
9. requires the board to provide notice and an opportunity for a hearing pursuant to the Uniform Administrative Procedure Act (UAPA) before assessing any penalty.

EFFECTIVE DATE: October 1, 2016

§ 1 — DEFINITIONS

The bill defines several terms related to individual tax preparation services. Under the bill, "commercial tax preparer" means a preparer who (1) prepared at least 10 returns for compensation in the preceding calendar year and will prepare at least one such return for compensation in the current calendar year or (2) prepared at least one, but less than 10, returns for compensation in the preceding calendar year but will prepare at least 10 such returns for compensation for the current calendar year.

A "tax preparer" is an individual who prepares a substantial portion of any return for compensation, including a commercial tax preparer who prepares clients' returns, but excluding specified individuals the bill exempts from its requirements (see EXEMPT INDIVIDUALS).

Under the bill, a "facilitator" is a person who individually or in conjunction or cooperation with another person (1) solicits the execution of, processes, receives, or accepts an application or agreement for a refund anticipation loan or refund anticipation check; (2) serves or collects upon a refund anticipation loan or refund

anticipation check; or (3) in any other manner, facilitates a refund anticipation loan or refund anticipation check. "Facilitator" does not include a facilitator's employee who provides only clerical or comparable support services.

A "client" is an individual for whom a commercial tax preparer, facilitator, or commercial tax preparation business performs or agrees to perform individual tax preparation services. To "provide individual tax preparation services" means to, for valuable consideration, prepare, advise, or assist in the preparation of, or to assume final responsibility for, another person's federal or state income tax return.

Under the bill, "refund anticipation check" means a check, stored value card, or other type of payment that (1) represents tax refund proceeds, (2) is issued by a bank or other person that received the tax refund or credits through direct deposit, and (3) is paid for by a fee or other consideration.

"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. It includes any sale, assignment, or purchase of a tax refund at a discount or for a fee, whether or not the amount must be repaid to the buyer or assignee if the IRS or the state Department of Revenue Services (DRS) denies or reduces the refund amount.

§§ 2, 3, 10 & 15 — STATE BOARD OF TAX PRACTITIONERS

Membership and Qualifications (§ 2)

The bill places the board within the Office of the Secretary of the State. It requires the governor to appoint all members, in consultation with the secretary, and select the chairperson from among them.

Seven members must have at least five years' experience as tax preparers, and one must be a member of a nonprofit tax program or nonprofit consumer advocate program. All members must be state residents; any whose professional license is revoked or suspended automatically ceases to be a member.

The board may include the following members:

1. a commercial tax preparer who has been in practice in this state for more than 10 years and has at least 200 employees,
2. a member of the Connecticut Association of Certified Public Accountants,
3. a member of the Connecticut Society of Public Accountants,
4. a member of the Connecticut Bar Association, or
5. a member of the National Association of Enrolled Agents.

Terms and Vacancies (§ 2)

Members' terms are coterminous with the governor's term. The governor fills any vacancy for the unexpired portion of the term. Members whose terms expire serve until their successors are appointed.

The bill prohibits members from serving more than two complete, successive terms; a vacancy appointment is not considered a complete term. It makes members ineligible for reappointment if, without just cause, they fail to attend 50% of all meetings in any calendar year.

Conducting Business (§ 2)

The board must meet at least quarterly, and a majority of those serving at any given time constitutes a quorum. It may (1) recommend, and the secretary of the state may employ, necessary personnel and (2) enter into contracts, within available appropriations and according to established procedures, or appoint committees or people to help it administer and enforce the licensure requirements. Members receive reimbursement for actual and necessary expenses incurred in discharging their duties.

The bill indemnifies the board, its members, and its agents from personal liability for good faith actions they take in discharging the board's responsibilities.

General Powers (§§ 2 & 3)

The bill gives the board certain powers and authorizes it to take any action necessary and proper to effectuate its purposes. Under the bill, the board may do the following:

1. determine the qualifications of commercial tax preparer or facilitator licensure applicants;
2. have examinations prepared, conducted, and graded;
3. issue licenses to qualified applicants;
4. exercise general supervision over each commercial tax preparer and facilitator practice;
5. formulate a code of professional conduct for commercial tax preparers and facilitators;
6. require successful completion of an educational program as a condition for reissuing, restoring, retaining, or renewing a license; and
7. adopt implementing regulations.

Under the bill, the board must maintain a registry with the names and addresses of licensees. It must annually publish a licensee directory.

Enforcement Powers (§§ 2, 3, 10 & 15)

In addition to the powers enumerated above, the bill gives the board broad investigatory and enforcement powers. Specifically, the bill authorizes the board to do the following:

1. investigate and enforce violations of the bill's provisions or any related regulation or order;
2. suspend or revoke a license or place a licensee on probation;
3. restore a suspended or revoked license (a) at a time certain or

- (b) when a person fulfills any conditions the board sets for reissuance;
4. assess civil penalties for violations of the bill's provisions, or of any related regulation or order, including costs associated with a disciplinary or other board action; and
 5. order any person who violates the bill's provisions, or any related regulation or order, to rescind and pay restitution to anyone harmed who seeks rescission.

Under the bill, the board may (1) issue subpoenas, administer oaths, compel testimony, or order the production of records and documents and (2) apply to Superior Court for an enforcement order. It may also issue orders requiring people to cease and desist from any violation of the bill's provisions or any related regulation or order.

Upon issuing a cease and desist order, the board must promptly serve notice on the person engaging in or about to engage in the violation. The notice must inform the recipient that he or she may have a hearing with the board by filing a written request within 20 days after the date of service. The board may apply to Superior Court for injunctive relief if a person fails to comply with a cease and desist order after receiving notice.

If a hearing is timely requested, the board must hold a contested case hearing pursuant to the UAPA. Any civil penalties assessed pursuant to the cease and desist order must be suspended until a final decision is issued, but the order's other provisions remain in full force and effect until the issuance.

After the hearing, the board must enter a final decision vacating, modifying, or affirming the cease and desist order. Any person aggrieved by the final decision may appeal to Superior Court.

The bill specifies that any judicial review of a cease and desist order does not bar the board from later (1) vacating or modifying the cease and desist order involved in the proceeding for review or (2) entering a

new order. In these cases, the order must be for a proper cause that was not decided by the reviewing court.

The bill allows, but does not require, the board to keep any personal financial information it retains through an investigation confidential after issuing a final decision, unless it considers disclosure necessary for the investigation or prosecution of an alleged violation of the bill or any related regulation or order. "Personal financial information" includes tax returns.

§§ 3-6, 11, 12 & 14 — LICENSURE

With exceptions, the bill prohibits a person from providing individual tax preparation services without a commercial tax preparer license or facilitator license. The prohibition also applies when (1) engaging in the business of individual tax preparation services, (2) soliciting business for or advertising these services, or (3) holding oneself out as providing these services.

Credentials (§§ 4 & 5)

The bill requires applicants for a commercial tax preparer or facilitator license to meet the following criteria, at a minimum:

1. be at least age 18;
2. have a high school diploma or have passed an equivalency examination;
3. complete at least 70 hours in basic personal income tax law, theory, and practice at a board-approved professional training session or educational institution;
4. pass an examination to the board's satisfaction; and
5. present evidence of active employment.

Examination. The bill requires that the licensure exam be prepared in a manner that, in the board's judgment, measures the applicant's knowledge of state and federal personal income tax law, theory, and

practice. For a facilitator's license, the exam must be of a more exacting nature and require higher standards of knowledge.

Active Employment. The bill requires each licensure applicant to have at least 1,100 hours during two of the last five years of (1) active employment as a commercial tax preparer or facilitator or (2) employment in this or another state in an equivalent capacity. Under the bill, the board may accept a certificate issued by another state as evidence that the applicant was employed as a commercial tax preparer under supervision for the period indicated (presumably, this supervision provision also applies to in-state employment).

Exemptions. Under the bill, if an applicant has not reached the 1,100 hour employment threshold, the board may consider (1) the number of hours or years worked, (2) the number of tax returns prepared, and (3) whether the work contributed directly to the individual's professional competence.

Also, the board may allow some of an applicant's education or professional experience to substitute for the active employment or 70-hour training requirement if, in its judgement, the applicant has the combined education and experience to qualify for licensure but does not meet or cannot show strict compliance with these requirements. However, the bill also specifies that this provision must not be construed to allow a waiver of, or substitution for, any qualification required for licensure.

Applicants for Other States. The bill specifies that the board may issue a license to an applicant who (1) presents satisfactory evidence that he or she has an equivalent license in a state with substantially similar licensure requirements and (2) passes an exam on Connecticut and federal personal income tax law, theory, and practice.

Application Process (§ 6)

The bill requires commercial tax preparers and facilitators who will provide services during a calendar year to electronically apply for a license according to rules the board prescribes. The license covers that

calendar year and must be renewed annually. If any information provided during the licensing process changes during the year, the preparer or facilitator must update it according to instructions from the board.

Under the bill, a qualified applicant is issued a license upon completing the licensing process. A licensee who practices as a commercial tax preparer, as well as a facilitator, receives one license. Commercial tax return preparation businesses and facilitators must ensure that commercial tax preparers or facilitators who are employees or prospective employees have a proper and valid license.

The bill requires the board to assign each commercial tax preparer or facilitator a unique identification number. The identification number must be used on each return, refund anticipation loan, or refund anticipation requiring a licensee's signature.

The bill specifies that a license is not, and must not be advertised as, an endorsement by the board regarding qualifications or services.

The bill specifically prohibits a commercial tax preparer who has not applied for a license or paid the applicable fee from representing clients before DRS. It also subjects a commercial tax preparer or facilitator who fails to apply for a license or license renewal to a \$25 penalty for each month the violation occurs, up to \$300 per calendar year. The board may waive the penalty for good cause.

License Renewals (§ 11)

The bill generally requires that commercial tax preparers and facilitators maintain good standing by annually renewing their licenses. Under the bill, "good standing" means the individual has not engaged in conduct that would justify censure, suspension, or disbarment.

To renew, the licensee must show that, since initially receiving or last renewing the license, he or she has completed at least 20 hours of instruction or seminars in subjects related to income tax. The bill

generally prohibits the board from renewing a license if the applicant does not meet the continuing education requirement. But it allows the board to exempt a commercial tax preparer or facilitator from the requirement if, upon application, he or she demonstrates an inability to comply because of unusual or extenuating circumstances, including a medical reason or military duty.

Inactive Status (§ 12)

Under the bill, a commercial tax preparer or facilitator may (1) apply to the board for inactive status if he or she stops preparing, or advising or assisting in the preparation of, personal income tax returns and (2) renew or reactivate an inactive status license after paying the applicable license fee. An inactive status licensee is prohibited from practicing and the board may revoke or suspend such a license for the same reasons it may revoke or suspend an active license.

The bill specifies that the continuing education requirement for general license renewal does not apply to renewing an inactive license. However, the board may, by regulation, set a continuing education requirement for inactive license reactivation.

License Restorations (§ 3)

Under the bill, the board may restore licenses, including any that were suspended or revoked because of a criminal conviction. In determining whether to restore a license, the board must consider the relationship of the facts that supported the conviction to the code of professional conduct and all intervening circumstances.

Fees for Initial Licenses and Annual Renewals (§ 4)

The bill sets the initial application fees for a facilitator's license and a commercial tax preparer's license at \$50 and \$100, respectively. Each is renewable annually for a \$100 fee.

§ 13 — EXEMPT INDIVIDUALS

The bill exempts several types of individuals from its licensure requirements and thus, the board's oversight. Specifically, it exempts

an individual:

1. in good standing with an active license issued by the State Board of Accountancy;
2. in good standing and admitted to practice law in this or another state, and employees of attorneys or firms preparing returns under the supervision of such attorneys;
3. employed by a local, state, or federal government agency when performing official duties;
4. enrolled to practice before the IRS under Circular 230 (see BACKGROUND);
5. serving as an employee of, or assistant to, a commercial tax preparer or another exempt individual when performing related official duties;
6. hired to fill a permanent position related to the duties as an employee with the incidental duty of preparing income tax returns for the employer's business only;
7. who is a fiduciary while acting as such, or the fiduciary's regular employees, acting on behalf of the fiduciary estate or its testator, grantor, or beneficiaries;
8. who is a CPA with an active firm permit or license, a public accountant with a valid permit issued under a registered public accounting firm, and an employee of any such public accountant or firm preparing returns under their; or
9. who is an IRS-qualified tax preparer, including someone working for the Volunteer Income Tax Association and Tax Counseling for the Elderly programs (see BACKGROUND).

§ 8 — WRITTEN DISCLOSURES BY COMMERCIAL TAX PREPARERS

The bill requires licensed commercial tax preparers to give clients a

written disclosure before providing tax preparation services. The disclosure must consist of the following information:

1. the tax preparer's (a) name, address, and telephone number and (b) education and training, including exams taken and passed;
2. a statement that the tax preparer is not a CPA, tax attorney, or an individual enrolled to practice before the IRS under Circular 230;
3. a list or description of the services that the tax preparer is qualified to provide; and
4. the fees charged for individual tax preparation services.

The fee information must contain (1) a list describing the fee for each tax preparation service, including fees for preparing individual forms; (2) a list describing each miscellaneous fee associated with the tax preparation services, including filing and processing fees; and (3) an estimate of the total charge based on the services the client will buy.

§§ 9 & 10 — PROHIBITED PRACTICES

The bill prohibits several practices and subjects violators to penalties and other enforcement actions by the board. Specifically, the bill prohibits commercial tax preparers and facilitators from doing the following:

1. charging or imposing any fee, charge, or other consideration (other than the fee the creditor or bank that provided the loan or check charges) when making or facilitating a refund anticipation loan or refund anticipation check;
2. engaging in unfair or deceptive acts or practices when facilitating a refund anticipation loan or a refund anticipation check, including making any oral statements contradicting any of the information required to be disclosed under the federal Taxpayer Bill of Rights (see BACKGROUND);

3. arranging for a third party to impose any interest, fee, or charge related to a refund anticipation loan or refund anticipation check;
4. taking or arranging for a creditor to take a security interest in any property interest of the taxpayer, other than the tax refund proceeds, to secure a refund anticipation loan payment;
5. individually or in concert with another person, engaging in the collection of an outstanding or delinquent refund anticipation loan for any creditor, bank, or assignee;
6. making a misrepresentation of fact in obtaining or attempting to obtain a license;
7. failing or refusing to give a client, for the client's own records, a copy of any document requiring his or her signature, within a reasonable time after signing it;
8. failing to maintain a copy of any tax return prepared for a client for four years after the date of completion or the return's due date, whichever is later;
9. knowingly giving false or misleading information to a client, surety company, or the board; or
10. engaging in any other act prohibited by the board's regulations.

The bill also prohibits commercial tax preparers and facilitators from including certain provisions in documents used to obtain a refund anticipation loan or refund anticipation check, including the loan application or agreement. Specifically, it voids the following provisions:

1. a hold harmless clause;
2. a confession of judgment clause;
3. a jury trial waiver;

4. any assignment of or order for payment of wages or other compensation for services;
5. a waiver of any provision of the Taxpayer Bill of Rights; or
6. a waiver of the right to injunctive, declaratory, other equitable relief, or relief on a class-wide basis.

Grounds for Discipline or Licensure Denial (§ 10)

The bill establishes grounds for which the board may deny a license application or discipline a licensee. In addition to the prohibited practices listed above, the bill thus prohibits a commercial tax preparer or facilitator from engaging in any of the following acts and makes each violation a separate offense:

1. unprofessional conduct, including conduct that resulted in the denial of licensure, certificate, permit, or registration, or revocation, suspension, restriction, or other disciplinary action against the applicant or licensee by the federal government or another state or U.S. territory, a government agency, or a professional licensing board or organization (a certified copy of the decision, order, or judgment is conclusive evidence of the conduct);
2. procuring or attempting to procure a license by fraud, misrepresentation, or mistake;
3. violating or attempting to violate, assisting in or abetting the violation of, or conspiring to violate any of the bill's requirements or the board regulations;
4. having a felony or misdemeanor conviction that is substantially related to the qualifications, functions, or duties of a licensee (the conviction record is conclusive evidence of the crime);
5. impersonating or acting as a proxy for an applicant, in any situation or exam, for the issuance of a license;

6. impersonating a licensee or allowing an unlicensed person to use a license; or
7. committing a fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.

The bill authorizes the board to discipline a licensee by one or more of the following methods:

1. placing a licensee on probation;
2. suspending a license and the rights it grants for a up to one year;
3. revoking a license;
4. suspending or staying a disciplinary order, or portions of it, with or without conditions; or
5. taking any other action the board deems proper and is authorized to take by the bill or by regulation.

The board may issue an initial probationary license, with specific terms and conditions, to any applicant. If the board suspends or revokes a license, the bill requires it to notify the IRS and DRS.

§§ 3 & 7 — REGULATIONS

The bill authorizes the board to adopt implementing regulations. It also requires the board to adopt regulations (1) on determining eligibility for a combined license and (2) establishing fees. With respect to the latter, the board must establish reasonable fees for the following licensure transactions:

1. applying for the facilitator's or commercial tax preparer's license examination;
2. issuing, renewing, or reactivating an inactive license;

3. restoring a lapsed license;
4. issuing or replacing a duplicate license; and
5. issuing or renewing a combined facilitator's or commercial tax preparer's license for a sole proprietorship, partnership, corporation, or other legal entity.

The bill does not establish a deadline by which the board must adopt regulations. It is thus unclear whether a fee would apply if, at the time of receiving an application for a license listed above, the board has not adopted the regulations.

§§ 9, 14 & 16 — PENALTIES

The bill establishes penalties for violating its prohibited practices provisions, as well as penalties for violating any of its provisions in general.

Prohibited Practices Violations (§ 9)

The bill subjects commercial tax preparers or facilitators who violate its prohibited practices provisions to a civil penalty of up to \$2,500 for each violation. In addition, a commercial tax preparer who fails to sign a return requiring the signature, or a facilitator who fails to sign a refund anticipation loan or refund anticipation check facilitation documentation, is subject to a \$225 civil penalty for each failure, up to a maximum of \$2,500 per calendar year. For any violation in a subsequent calendar year, violators are subject to a \$500 civil penalty, with no maximum.

A commercial tax preparer or facilitator who fails to include his or her unique board-assigned identification number on a return, return anticipation loan, or return anticipation check facilitation documentation that requires his or her signature is subject to a \$100 civil penalty for each failure, up to \$2,500 per calendar year. For any violation in a subsequent calendar year, violators are subject to a \$225 civil penalty with no maximum.

A commercial tax preparer, facilitator, or commercial tax return preparation business that employs an individual to prepare tax returns who is not board-licensed is subject to a \$500 civil penalty per violation.

The bill allows the board to waive any of these penalties for good cause.

General Violations (§ 14)

The bill subjects people who violate any of its provisions to a civil penalty of up to \$2,500 per violation. The board must determine the penalty amount after considering the violation's seriousness, prior violations, and any other consideration it deems appropriate. The bill specifies that this civil penalty is deposited in the General Fund.

Connecticut Unfair Trade Practices Act (CUTPA) Violations (§ 16)

The bill makes any violation of its provisions an unfair trade practice under CUTPA. By doing so, it authorizes the consumer protection commissioner to investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Under CUTPA, courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

BACKGROUND

Internal Revenue Service - Circular 230

Circular 230 contains regulations governing practice before the IRS applicable to attorneys, certified public accountants, enrolled agents, enrolled retirement plan agents, registered tax return preparers, and others representing taxpayers. It is divided into several parts, including rules governing authority to practice, duties and restrictions, sanctions for violations, and disciplinary proceedings (31 CFR § 10.4).

Volunteer Income Tax Association or Tax Counseling for the Elderly Programs

The IRS' Volunteer Income Tax Assistance program offers free tax help to people who generally make \$54,000 or less, people with disabilities, and limited English speaking taxpayers who need assistance. IRS-certified volunteers provide basic income tax return preparation with electronic filing to qualified individuals.

In addition, the Tax Counseling for the Elderly program offers free tax help for all taxpayers, particularly those who are at least age 60, specializing in questions about pensions and retirement-related issues unique to seniors.

Taxpayer Bill of Rights

In June 2014, the IRS adopted the Taxpayer Bill of Rights to provide taxpayers with a better understanding of their rights. It takes the existing rights embedded in the tax code and groups them into 10 broad categories, including the right to (1) be informed, (2) quality service, (3) pay no more than the correct amount of tax, (4) challenge the IRS's position and be heard, (5) appeal an IRS decision in an independent forum, and (6) confidentiality, among others.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 12 Nay 2 (03/21/2016)