

**ASSEMBLY BILL**

**No. 843**

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**Introduced by Assembly Member Nunez**

February 18, 2005

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An act to amend Section 22251 of, and to add Section 22253.1 to, the Business and Professions Code, relating to tax preparers.

LEGISLATIVE COUNSEL'S DIGEST

AB 843, as introduced, Nunez. Tax preparers.

Existing law requires a tax preparer to maintain a bond in favor of, and payable to, the people of the State of California, for each individual preparing tax returns for another person. Existing law requires a tax preparer to provide a customer with certain information in writing prior to rendering any tax preparation services. A willful violation of the laws regulating tax preparers is a crime.

This bill would prohibit a tax preparer who advertises the availability of a refund anticipation loan from representing the loan as a client's actual refund. The bill would require a tax preparer that offers to make or facilitate, or who makes or facilitates, a refund anticipation loan to a client to provide the client with a disclosure and statement satisfying specified requirements.

Because a violation of the bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 22251 of the Business and Professions  
 2 Code is amended to read:  
 3 22251. For the purposes of this chapter, the following words  
 4 have the following meanings:  
 5 (a) (1) Except as otherwise provided in paragraph (2), “tax  
 6 preparer” includes:  
 7 (A) A person who, for a fee or for other consideration, assists  
 8 with or prepares tax returns for another person or who assumes  
 9 final responsibility for completed work on a return on which  
 10 preliminary work has been done by another person, or who holds  
 11 himself or herself out as offering those services. A person  
 12 engaged in that activity shall be deemed to be a separate person  
 13 for the purposes of this chapter, irrespective of affiliation with, or  
 14 employment by, another tax preparer.  
 15 (B) A corporation, partnership, association, or other entity that  
 16 has associated with it persons not exempted under Section 22258,  
 17 which persons shall have as part of their responsibilities the  
 18 preparation of data and ultimate signatory authority on tax  
 19 returns or that holds itself out as offering those services or having  
 20 that authority.  
 21 (2) Notwithstanding paragraph (1), “tax preparer” does not  
 22 include an employee who, as part of the regular clerical duties of  
 23 his or her employment, prepares his or her employer’s income,  
 24 sales, or payroll tax returns.  
 25 (b) “Tax return” means a return, declaration, statement, refund  
 26 claim, or other document required to be made or filed in  
 27 connection with state or federal income taxes or state bank and  
 28 corporation franchise taxes.  
 29 (c) An “approved curriculum provider,” for purposes of basic  
 30 instruction as described in subdivision (a) of Section 22255, and  
 31 continuing education as described in subdivision (b) of Section  
 32 22255, is one who has been approved by the council as defined in  
 33 subdivision (d). A curriculum provider who is approved by the  
 34 tax education council is exempt from Chapter 7 (commencing

1 with Section 94700) of Part 59 of Division 10 of the Education  
2 Code.

3 (d) “Council” means the California Tax Education Council  
4 that is a single organization made up of not more than one  
5 representative from each professional society, association, or  
6 other entity operating as a nonprofit corporation that chooses to  
7 participate in the council and that represents tax preparers,  
8 enrolled agents, attorneys, or certified public accountants with a  
9 membership in California of at least 200 for the last three years,  
10 and not more than one representative from each for-profit tax  
11 preparation corporation that chooses to participate in the council  
12 and that has at least 200 employees and has been operating in  
13 California for the last three years. The council shall establish a  
14 process by which two individuals who are tax preparers pursuant  
15 to Section 22255 are appointed to the council with full voting  
16 privileges to serve terms as determined by the council, with their  
17 initial terms being served on a staggered basis. A person exempt  
18 from the requirements of this chapter pursuant to Section 22258  
19 is not eligible for appointment to the council, other than an  
20 employee of an individual in an exempt category.

21 (e) “Client” means an individual for whom a tax preparer  
22 performs or agrees to perform tax preparation services.

23 (f) “Refund anticipation loan” means a loan, whether  
24 provided by the tax preparer or another entity, such as a  
25 financial institution, in anticipation of, and whose payment is  
26 secured by, a client’s federal or state income tax refund or by  
27 both.

28 SEC. 2. Section 22253.1 is added to the Business and  
29 Professions Code, to read:

30 22253.1. (a) Any tax preparer who advertises the availability  
31 of a refund anticipation loan shall not directly or indirectly  
32 represent the loan as a client’s actual refund. Any advertisement  
33 that mentions a refund anticipation loan shall state conspicuously  
34 that it is a loan and that a fee or interest will be charged by the  
35 lending institution. The advertisement shall also disclose the  
36 name of the lending institution.

37 (b) Every tax preparer who offers to make or facilitate, or who  
38 makes or facilitates, a refund anticipation loan to a client shall  
39 display a schedule showing the current fees for refund  
40 anticipation loans facilitated at the office, for the electronic filing

1 of the client's tax return, for setting up a refund account, and any  
2 other related activities necessary to receive a refund anticipation  
3 loan. The fee schedule shall also include a statement indicating  
4 that the client may have the tax return filed electronically without  
5 also obtaining a refund anticipation loan.

6 (c) The postings required by this section shall be made in not  
7 less than 28-point type on a document measuring not less than 16  
8 by 20 inches. The postings required in this section shall be  
9 displayed in a prominent location at each office where any tax  
10 preparer is offering to make or facilitate or making or facilitating  
11 a refund anticipation loan.

12 (d) For refund anticipation loans, a tax preparer shall provide  
13 the client with a written notice on a single sheet of paper,  
14 separate from any other document or writing, containing all of  
15 the following:

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

18 (2) The following verbatim statements:

19 "You are not required to enter into this refund anticipation loan  
20 agreement merely because you have received this information."

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

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

27 "You can get the full amount of your refund in about 10-14  
28 days if you file your return electronically and have the Internal  
29 Revenue Service send your refund to your own bank account, or  
30 in about 21 days if you file your return by mail. If you do not  
31 have a bank account, you may wish to consider getting one."

32 "If you choose to take this loan and your refund is delayed, you  
33 may have to pay additional interest. If the refund is received in  
34 your bank account in less than the time we expect the refund to  
35 be received from the Internal Revenue Service, you will not  
36 receive any refund in fees or charges."

37 (3) The name and address of the lender.

38 (4) The estimated time the loan proceeds will be made  
39 available to the client if the loan is approved.

1 (e) All statements required in paragraph (2) of subdivision (d)  
2 shall be in a minimum of 12-point type, with at least a double  
3 space between each line in the statement and 3 spaces between  
4 each statement.

5 (f) A blank written notice shall be provided to the client by  
6 any tax preparer who offers to make or facilitate or who makes or  
7 facilitates a refund anticipation loan upon being notified by the  
8 client that the client wishes to apply for a refund anticipation  
9 loan.

10 (g) The provisions of this section shall comply with the  
11 language requirements set forth in Section 1632 of the Civil  
12 Code.

13 (h) Before a client enters into a refund anticipation loan  
14 agreement, the tax preparer who is making or facilitating the  
15 refund anticipation loan shall provide the filled-in written notice  
16 described in subdivision (d) to the client.

17 (i) Any tax preparer who offers to make or facilitate, or who  
18 makes or facilitates, a refund anticipation loan may not engage in  
19 any of the following activities:

20 (1) Requiring a client to enter into a loan arrangement in order  
21 to complete a tax return.

22 (2) Misrepresenting a material factor or condition of a refund  
23 anticipation loan.

24 (3) Failing to process the application for a refund anticipation  
25 loan promptly after the client applies for the loan.

26 (4) Engaging in any transaction, practice, or course of business  
27 that operates a fraud upon any person in connection with a refund  
28 anticipation loan.

29 (5) Facilitating a refund anticipation loan for which the refund  
30 anticipation loan fee is different than the fee posted.

31 SEC. 3. No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 the only costs that may be incurred by a local agency or school  
34 district will be incurred because this act creates a new crime or  
35 infraction, eliminates a crime or infraction, or changes the  
36 penalty for a crime or infraction, within the meaning of Section  
37 17556 of the Government Code, or changes the definition of a  
38 crime within the meaning of Section 6 of Article XIII B of the  
39 California Constitution.

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