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Title: Adding Article 20 Of Chapter 13 Of The Revised Ordinances Of Albuquerque To Add Part 1 Creating The Albuquerque Tax Preparers And Consumer Rights Ordinance (Davis, by request)

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2/5/2021	1	City Council	Sent to Mayor for Signature	
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2/1/2021	1	City Council	Amended	Pass
2/1/2021	1	City Council	Amended	Pass
2/1/2021	1	City Council	Passed as Amended	Pass
1/4/2021	1	City Council	Postponed	Pass
12/7/2020	1	City Council	Introduced	
12/7/2020	1	President	To be heard at the Council Meeting	

CITY of ALBUQUERQUE
TWENTY FOURTH COUNCIL

COUNCIL BILL NO. O-20-46 ENACTMENT NO. _____

SPONSORED BY: Pat Davis, by request

ORDINANCE

Adding Article 20 Of Chapter 13 Of The Revised Ordinances Of Albuquerque To Add Part 1 Creating The Albuquerque Tax Preparers And Consumer Rights Ordinance (Davis, by request)

ADDING ARTICLE 20 OF CHAPTER 13 OF THE REVISED ORDINANCES OF ALBUQUERQUE

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TO ADD PART 1 CREATING THE ALBUQUERQUE TAX PREPARERS AND CONSUMER RIGHTS ORDINANCE.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. Article 20 of Chapter 13 ROA 1994 is created to add Part 1, Section 13-20-1-1 through 13-20-1-15, the Albuquerque Tax Preparer and Consumer Rights Ordinance, as follows:

PART 1.

§ 13-20-1-1 FINDINGS AND INTENT.

A. The City Council finds that, to better protect the public health, safety, and welfare of Albuquerque residents, it is in the public interest to address local issues of unfair, deceptive, and unconscionable trade practices in the conduct and provision of personal income tax preparation services in the City.
B. The purpose of this Part is to ensure that paid tax preparers provide advice and assistance to taxpayers in a competent and ethical manner, and to protect taxpayers as consumers when purchasing tax preparation services.
C. Through this Part, the City Council intends to protect the general public in the City from unfair, deceptive, and unconscionable trade practices in the conduct and provision of personal income tax preparation services and to regulate those businesses and individuals conducting personal income tax preparation services in the City.
D. The Albuquerque Tax Preparer and Consumer Rights Ordinance is enacted pursuant to the general welfare and police powers of the City of Albuquerque.

§ 13-20-1-2 SHORT TITLE.

This Part shall be referred to as the “Albuquerque Tax Preparer and Consumer Rights Ordinance” and will sometimes be referred to herein as “this Part.”

§ 13-20-1-3 DEFINITIONS.

For purposes of the Albuquerque Tax Preparer and Consumer Rights Ordinance, the following terms shall have the stated meaning, unless the context clearly requires a different meaning:

ASSISTED DIRECT DEPOSIT. A mechanism or agreement through which:

A. A consumer’s individual tax refund(s) is deposited in a financial account other than the consumer’s bank account;
B. Charges related to the underlying income tax return, including tax preparation and/or refund settlement charges are deducted from the deposit; and

C. The remaining portion of the refund is deposited in the consumer's bank account.

CONSUMER. A natural person who, singly or jointly with another consumer, files a federal or state personal income tax return.

REFUND. A federal or state personal income tax refund.

REFUND ANTICIPATION CHECK. A check, debit card, or other payment mechanism that is issued to a consumer based on the anticipated amount of their federal or state personal income tax refund and prior to the actual issuance of the refund by the federal or state government.

REFUND ANTICIPATION LOAN. A loan that is secured by a creditor or that a creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refund(s) or tax credits, including any sale, assignment, or purchase of a tax refund or tax credit at a discount or for a fee.

REFUND SETTLEMENT PRODUCT. Any assisted direct deposit, refund anticipation check, refund anticipation loan, or other similar mechanism, agreement, or transaction through which a consumer receives money, in an amount based on their anticipated personal income tax refund, from a person other than the federal or a state government.

RETURN. A federal or state personal income tax return.

TAX PREPARATION SERVICE. Preparation, advice, or assistance in the preparation of, or assumption of final responsibility for another person's preparation of, a federal or state personal income tax return of a consumer for compensation or valuable consideration. This shall include any tax preparation services provided in conjunction with a refund anticipation loan, refund anticipation check, or refund settlement product.

TAX PREPARER. A person who prepares for compensation, or who employs one or more persons to prepare for compensation, a personal income tax return or any claim for tax refund or who holds themselves out as providing personal income tax preparation services. A tax preparer shall not include:

A. A licensed attorney-at-law, in good standing in this state or any other state, who provides tax preparation services and any employee of such attorney-at-law;
B. A certified public accountant who provides tax preparation services and any employees of such certified public accountant;
C. An employee of or volunteer for a Volunteer Tax Assistance program;
D. An officer or employee of a federal, state, or local governmental agency who provides tax preparation services in the scope of their employment; or

E. A duly appointed administrator, conservator, guardian, personal representative, trustee, or receiver who provides tax preparation services in the normal course of their prescribed duties.

WRITING. Information legibly recorded in paper or electronic form.

§ 13-20-1-4 MANDATORY DISCLOSURES.

Prior to providing any individual tax preparation services, a tax preparer must provide the consumer with the following:

A. A copy of the "Albuquerque Consumer Bill of Rights for Paid Personal Income Tax Preparation Services" that the City shall make available online for the tax preparer to print and provide to the consumer.

B. Tax Preparer Disclosure. A separate written "Tax Preparer Disclosure" consisting of:

1. The tax preparer's name, address, telephone number and PTIN from the Internal Revenue Services (IRS);
2. A statement that the tax preparer is not a certified public accountant, tax attorney, or enrolled agent with the IRS;
3. A written summary of the tax preparer's qualifications, including:
    a. Educational degrees attained;
    b. Years of education directly related to tax preparation service; and
    c. Years of experience in tax preparation service.
4. A statement informing consumers that they may be able to file their federal taxes for free via the IRS website or may qualify for free tax preparation assistance from nonprofit organizations;
5. A statement that, prior to entering into any written agreement or contract, the tax preparer shall provide the consumer with a written estimate of the total charges based upon the tax preparation services selected by the consumer; and
6. The tax preparer's New Mexico Combined Reporting System (CRS) Identification Number.

C. Fee Schedule Disclosure. A separate written disclosure of fees, entitled "Fee Disclosure", for individual tax preparation services that contains the following information:

1. A list of, description of, and the fee for each tax preparation service offered by the tax preparer, including the fees for preparation of individual forms;
2. A list of, description of, and price of all miscellaneous fees associated with the tax preparer's tax preparation services, including any worksheet processing, billing, filing or

other fees; and

3. A statement that the “Fee Disclosure” does not include any costs associated with a refund anticipation loan, refund anticipation check or refund anticipation product.

D. Written Estimate of Fees.

1. Prior to the consumer entering into any written agreement or contract or paying any amount, the tax preparer shall provide the consumer with a written estimate of the total charges based upon the tax preparation services selected by the consumer;
2. If an estimate of an anticipated tax refund is prepared in conjunction with a refund anticipation loan, refund anticipation check or refund anticipation product, the tax preparer shall provide the consumer with:
   a. A written estimate of the total charges based upon the tax preparation services anticipated;
   b. The amount of any tax refund anticipated from the federal and any state government; and
   c. A written estimate of the dollar amount and percentage of the consumer’s total anticipated tax refund to be paid to the consumer once all fees of the tax preparer, including any affiliate of the tax preparer, are deducted.

E. Final Accounting. Upon the conclusion of services, the tax preparer shall provide:

1. A final itemized accounting of all services provided and the fees charged for those services and, if included, any refund settlement products, selected by the consumer, including any fees and costs;
2. A written explanation of any fees or costs charged in excess of the estimated charges previously disclosed;
3. A written statement setting forth the dollar amount and percentage of the consumer’s total refund that is to be paid to the tax preparer and any affiliate of the tax preparer; and
4. A written statement setting forth the address and phone number where the consumer can contact the tax preparer throughout the year.

F. A tax preparer shall not enter into any written agreement or contract with the consumer until:

1. The tax preparer has verbally reviewed with the consumer each and every disclosure contained in the “Tax Preparer Disclosure” and “Fee Disclosure” forms; and
2. The consumer has certified that such review occurred by signing and dating each form.

G. The tax preparer must offer the consumer the choice between English and Spanish versions

of the “Tax Preparer Disclosure” and “Fee Disclosure” forms and must review the disclosures in the selected language. 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 services.

H. The City may prescribe model “Tax Preparer Disclosure” and “Fee Disclosure” forms to facilitate compliance with the disclosure requirements of this Part. A tax preparer shall be deemed in compliance with the disclosure requirements of this Part if a tax preparer uses such model form. Nothing in this Part shall be construed as requiring tax preparers to use any such model form.

I. A tax preparer shall provide all disclosures required by this Part, whether in writing or electronically, and must do so in a manner that is reasonably expected to provide actual notice and in a form that the consumer may retain and access in its entirety.

§ 13-20-1-5 TAX PREPARER OBLIGATIONS AND CONSUMER RIGHTS.

A tax preparer shall comply with the following obligations and consumer rights:

A. The tax preparer shall provide the consumer with the opportunity to review the final draft tax return before filing with the federal or state government;

B. The tax preparer shall provide the consumer with a copy of the final tax return at the time that such return is filed or given to the consumer to file with the federal or state government. The copy of the return shall be provided for no fee;

C. The tax preparer shall return to the consumer all personal papers and a copy of any permanent schedules or worksheets prepared. These documents shall be provided to the consumer within five (5) days of filing of the final tax return or when the final tax return is provided to the consumer for filing with the federal or state government;

D. A consumer has the right to have any tax refund deposited directly into their own bank account or, at their request, to have the refund sent to them via check;

E. The tax preparer shall not require any consumer to purchase a refund settlement product or any other good or service in order to receive tax preparation services from the tax preparer;

F. The tax preparer who, individually or in conjunction with others, makes or offers refund anticipation loans, is required to comply with NMSA 1978, §§ 58-15-1 *et seq.* and all disclosure and other requirements of this Part;

G. A consumer has the right to file a complaint with the City regarding a tax preparer; and

H. The tax preparer shall inform the consumer that they may be able to file their federal taxes for

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free via the IRS website or may qualify for free tax preparation assistance from nonprofit organizations.

§ 13-20-1-6 WRITTEN AGREEMENT.

No consumer shall be liable to a tax preparer for any charge, fee, or cost for personal income tax preparation services without a written agreement or contract for such services.

§ 13-20-1-7 ALBUQUERQUE CONSUMER BILL OF RIGHTS FOR PAID PERSONAL INCOME TAX PREPARATION SERVICES.

The City shall produce a document in English and Spanish, entitled “ALBUQUERQUE CONSUMER BILL OF RIGHTS FOR PAID PERSONAL INCOME TAX PREPARATION SERVICES.” The document shall be published prominently on the City’s website and shall contain a summary of the required disclosures, tax preparer obligations and consumer rights enumerated in this Part.

§ 13-20-1-8 MANDATORY POSTING.

A tax preparer shall post the following information, in a form and format prescribed by the City, in both English and Spanish, at any premises where the tax preparer renders any personal tax preparation services and on any website of the tax preparer. All signs displaying such information must be prominently and conspicuously posted at the primary public entrance to the business premises or in the immediate area where consumers arrive and are met by tax preparers and on any website of the tax preparer:

A. A statement that, prior to entering into any written agreement or contract, the tax preparer shall provide the consumer with a free copy of the “Albuquerque Consumer Bill of Rights for Paid Personal Income Tax Preparation Services.”
B. A written list, description, and price of all tax preparation services offered by the tax preparer.
C. A written list, description, and price of all miscellaneous fees associated with the tax preparer’s personal tax preparation services, including, but not limited to worksheet, filing, billing, and processing fees.
D. In addition to state and federal disclosure requirements related to refund anticipation loans, a written description and price of any tax settlement products offered by the tax preparer or an affiliate.
E. If the tax preparer is a sole proprietorship or partnership, the names of the owner. If the tax preparer is a corporation, the name shall be followed by the phrase “a corporation.”
F. The tax preparer’s New Mexico CRS Identification Number and PTIN.

G. The location(s), by street, number, city, county, state, and zip code where the tax preparer conducts business.

§ 13-20-1-9 PROHIBITED ACTIVITY.

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

B. No tax preparer shall represent to the public, by use of a title, including “tax preparer”, by description of services, methods or procedures, or otherwise, that the individual is authorized to provide individual tax preparation service in Albuquerque unless the tax preparer is in compliance with all provisions of this Part.

C. No tax preparer shall obtain the signature of a consumer to an incomplete tax return or authorizing document which contains blank spaces said tax preparer intends to later fill-in.

D. A tax preparer shall not knowingly make a false or misleading oral or written statement, visual description or other representation of any kind knowingly made, in connection with the tax preparation services offered or provided or in the extension of credit, which may, tends to or does deceive or mislead any consumer.

E. Each violation of this Part shall constitute a separate offense and each day of violation shall constitute a separate offense.

F. Any waiver by a consumer of any provision of this Part shall be deemed null, void and of no effect.

§ 13-20-1-10 PRIVATE RIGHT OF ACTION.

A. The remedies provided under this Part are cumulative of any other remedies provided by law.

B. Any violation by a person subject to this Part of any state law prohibiting unfair or deceptive or unconscionable acts or practices constitutes a violation of this Part.

C. A person likely to be damaged by a violation of this Part may be granted an injunction against the tax preparer under the principles of equity and on terms that the court considers reasonable. Proof of monetary damage, loss of profits or intent to deceive or take unfair advantage of any person is not required.

D. Any person who suffers damages as a result of any violation of this Part by any tax preparer may bring an action to recover actual damages or the sum of five hundred dollars ($500) per violation, whichever is greater.

E. The court shall award attorney fees and costs to the party complaining of a violation of this Part if the party prevails. The court shall award attorney fees and costs to the party charged

with a violation if it finds that the party complaining of such practices brought an action that was groundless.

F. Each act or omission in violation of this Part shall constitute a separate violation and each day of violation shall constitute a separate violation.

G. The remedies provided in this Part are not exclusive remedies nor must the consumer exhaust any administrative remedies provided under this Part or any other applicable law.

H. No written agreement or contract for individual tax preparation services shall contain any provision that, prior to the time a dispute arises, waives or has the effect of waiving the rights of a party to such agreement to resolve disputes by obtaining;

1. Injunctive, declaratory or other equitable relief;
2. Relief on a class-wide basis;
3. Punitive damages;
4. Damages as specified by statute;
5. Attorney's fees and costs as specified by statute or as available at common law; or
6. A hearing at which that party can present evidence in person.

I. Any provision in a written agreement or contract that violates this Part shall be void and unenforceable.

§ 13-20-1-11 CERTIFICATION OF COMPLIANCE.

No later than December 15th of each year in which a tax preparer has engaged in business pursuant to this Part, the tax preparer shall file with the City Attorney a Certification of Compliance declaring, under penalty of perjury, that the tax preparer is in compliance with each applicable provision of this Part. The Certification of Compliance shall be on a form or declaration designated by the City Attorney and available on the City website.

§ 13-20-1-12 JOINT AND SEVERAL LIABILITY.

Any person who employs or contracts with another person to provide tax preparation services shall be jointly and severally liable for violations of this Part with the employed or contracted tax preparer so long as said tax preparer provides any portion of the challenged tax preparation service within the City of Albuquerque.

§ 13-20-1-13 ENFORCEMENT.

A. The City may implement and enforce this Part.

B. The Mayor or the Mayor's designee is authorized to promulgate regulations, rules, and instructions to implement this Part. Each separate violation shall constitute a separate offense

and each day of violation shall constitute a separate offense.

C. The provisions of this Part shall apply to any person who seeks to evade its applicability by any device, subterfuge, or pretense.

D. This Part does not provide the exclusive remedy and does not prevent the City from seeking civil public enforcement of this Part via injunction or other available equitable and legal relief.

E. Nothing in this Part shall be construed to preempt, otherwise limit, or affect the applicability of any other law, regulation, rule, requirement, policy, or standard.

§ 13-20-1-14 SEVERABILITY.

If any portion of this Part is determined to be invalid for any reason by a final non-appealable order of any court of this state or a federal court of competent jurisdiction, then it shall be severed from the Part. All other provisions of this Part shall remain in full force and effect.

§ 13-20-1-15 EFFECTIVE DATE.

A. Compilation. This Part shall amend, be incorporated in and compiled as part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

B. Effective Date. This ordinance shall take effect five (5) days after publication by title and general summary.

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