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11/7/2022	1	President	Referred	
11/7/2022	1	City Council	Introduced and Referred	

CITY of ALBUQUERQUE
TWENTY FIFTH COUNCIL

COUNCIL BILL NO. O-22-53 ENACTMENT NO. _____

SPONSORED BY: Pat Davis

ORDINANCE

Repealing The “Albuquerque Tax Preparer And Consumer Rights Ordinance” In Its Entirety, And Creating The “Albuquerque Tax Preparer Ordinance” (Davis)

REPEALING THE “ALBUQUERQUE TAX PREPARER AND CONSUMER RIGHTS ORDINANCE” IN ITS ENTIRETY, AND CREATING THE “ALBUQUERQUE TAX PREPARER ORDINANCE”.

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

SECTION 1. REPEAL. The Albuquerque Tax Preparers and Consumer Rights Ordinance, ROA 1994, §§ 13-20-1-1 through 13-20-1-13, is repealed in its entirety.

SECTION 2. A new Article 20 is hereby added to Chapter 13 of the Revised Ordinances of Albuquerque as follows:

"§ 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 regulate the conduct and provision of personal income tax preparation services by tax preparers in the City.

B. The purpose of this is to ensure that paid tax preparers in the City provide certain information to taxpayers as part of the provision of tax preparation services, and to protect taxpayers as consumers when purchasing tax preparation services.

C. The Albuquerque Tax Preparer Ordinance is enacted pursuant to the general welfare and police powers of the City of Albuquerque.

§ 13-20-1-2 SHORT TITLE.

This Article shall be referred to as the "Albuquerque Tax Preparer Ordinance" and will sometimes be referred to herein as "this Article."

§ 13-20-1-3 DEFINITIONS.

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

CONSUMER. A natural person who, singly or jointly with another consumer, obtains tax preparation services in the City and files a federal or state personal income tax return.

PERSON. A natural person, corporation, trust, partnership, association, cooperative association, club, company, firm, joint venture or syndicate.

REFUND. A federal or state personal income tax refund.

REFUND ANTICIPATION CHECK OR REFUND TRANSFER. An agreement through which (1) a temporary limited or special purpose bank account is set up at a financial institution for the purpose of receiving the consumer's individual tax refund(s); (2) charges and fees related to the tax services, including tax preparation and related fees, are deducted from the temporary bank account after receipt of the consumer's tax refund(s); and (3) the remaining portion of the refund is disbursed to the consumer by check, prepaid card, debit card, or other payment mechanism.

REFUND ANTICIPATION LOAN. A loan that is arranged, offered or issued with the preparation of a consumer's tax return, and for which the creditor and consumer enter an agreement for the loan to be repaid by the consumer's federal or state personal income tax refund(s) or tax credits.

REFUND SETTLEMENT PRODUCT. Any refund anticipation check, refund transfer, or refund anticipation loan.

RETURN. A federal or state personal income tax return of a consumer.

TAX PREPARATION SERVICE. Preparation, advice, or assistance in the preparation of, or assumption of final responsibility for another person's preparation of a consumer's individual federal or state personal income tax return for compensation or valuable consideration in the City of Albuquerque.

TAX PREPARER. A person in the City of Albuquerque who prepares for compensation, or who employs one or more persons to prepare for compensation, all or a substantial portion of a consumer's personal income tax return, 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 or volunteer of a Volunteer Income Tax Assistance program, Tax Counseling for the Elderly program, or Low Income Taxpayer Clinic as described in 26 U.S.C. § 7526;

D. An officer or employee of a federal, state, or local governmental agency who provides tax preparation services in the scope of their employment;

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;

F. An individual enrolled to practice before the internal revenue service pursuant to 31 C.F.R. Subtitle A, Part 10 ("Circular 230"); or

G. An individual providing only typing, reproduction, or other mechanical assistance in the preparation of a return.

WRITTEN. Information legibly presented in paper or electronic form.

§ 13-20-1-4 MANDATORY POSTING.

A. A tax preparer shall post the following information in both English and Spanish, at any premises where the tax preparer renders any personal tax preparation services. 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 the tax preparer.

1. A sign in 22-point font or larger that states:

"KNOW YOUR RIGHTS BEFORE YOU HIRE A TAX PREPARER

Tax Preparers must:

- **Provide you with their contact information and PTIN (federal tax preparer number)**
- **Give you the amount of all fees and charges in writing before you have to pay**
- **Allow you to review your return before filing and ask any questions you may have**
- **Give you one free copy of your tax return when it is filed**
- **Return your original documents to you when requested**

Tax Preparers may NOT:

- **Require you to take a Refund Anticipation Loan**
- **Ask you to sign a return with blank spaces they will fill out later**
- **Guarantee that you will get a tax refund**
- **Guarantee that you won't be audited by the government**

What's a Refund Anticipation Loan (RAL)?

- **A loan you take out that will be repaid by your tax refund**
- **These loans are not a faster way to get your refund**
- **The loan may have fees and interest**

To learn more and for additional information, visit cabq.gov/taxpreprights.

To file a complaint about a tax preparer, visit cabq.gov/taxpreprights or call 311."

2. A statement of how fees for tax preparation services are calculated, including all miscellaneous fees and costs that may be incurred by the consumer in relation to the tax preparation and fees, costs or charges related to all refund settlement products offered by the tax preparer or a current price list containing such information.

3. If the tax preparer is a sole proprietorship or partnership, the names of all owners. If the tax preparer is a corporation, the name shall be followed by the phrase "a corporation."

B. The City may prescribe model forms consistent with this Article to facilitate tax

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preparer compliance with these disclosure requirements. A tax preparer shall be deemed in compliance with the disclosure requirements of § 13-20-1-4 if a tax preparer uses such model form. Nothing in this Article shall be construed as requiring tax preparers to use any such model form.

§ 13-20-1-5 MANDATORY DISCLOSURES.

A. Prior to entering into any obligation to pay for individual tax preparation services, a tax preparer or the tax preparer's representative must provide the consumer with the following information:

1. Tax Preparer Disclosure. A written disclosure with the title "Tax Preparer Disclosure" for the individual tax preparer or agent who will be responsible for preparing the return consisting of the following:

a. The tax preparer's name, address, telephone number and Preparer Tax Identification Number (PTIN) from the Internal Revenue Service (IRS);

b. A statement, if applicable, that the tax preparer is not a certified public accountant, tax attorney or enrolled agent with the IRS;

c. A description of the tax preparer's education or training related to tax preparation;

d. The tax preparer's New Mexico Business Tax Identification Number (BTIN).

2. Fee Schedule Disclosure. A separate written disclosure of fees entitled "Fee Disclosure" that contains the following:

a. How fees for the tax preparation services are calculated, such as charges by form, a base fee for specified forms plus charges for additional forms, charges by the hour, or other applicable fee schedule; and

b. A list of, description of, and the fee for each individual tax preparation service offered by the tax preparer for preparing and filing federal and state tax returns for consumers, including the fees, costs, or charges related to all refund settlement products offered by the tax preparer.

c. A statement of how fees for tax preparation services are calculated, including all miscellaneous fees and costs that may be incurred by the consumer in relation to the tax preparation and fees, costs or charges related to all refund settlement products offered by the tax preparer or a current price list containing such information.

B. Prior to the consumer being obligated to pay, the tax preparer shall provide to the consumer in writing all amounts that would be charged to the consumer for the individual

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tax preparation services provided and any refund settlement products selected by the consumer, including any fees and costs for such refund settlement products.

C. The City may prescribe model forms consistent with this Article to facilitate tax preparer compliance with these disclosure requirements. A tax preparer shall be deemed in compliance with the disclosure requirements of § 13-20-1-5 if a tax preparer uses such model form. Nothing in this Article shall be construed as requiring tax preparers to use any such model form.

D. The written disclosures required to be provided in this section shall be made available in English and Spanish. 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 at the consumer's own expense prior to continuing with the tax preparation services.

§ 13-20-1-6 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 the taxpayer signs the return and it is filed 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 for no additional fee or charge.

C. The tax preparer shall provide to the consumer 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, when the final tax return is provided to the consumer for filing with the federal or state government, or when requested by the consumer.

D. If requested, including at any time prior to the tax return being filed or given to the consumer to file, or the consumer terminates the agreement, the tax preparer shall return to the consumer all personal papers that were originally supplied. The tax preparer may retain copies of the records returned to a consumer.

E. 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.

F. No consumer shall be liable to a tax preparer for any charge, fee, or cost for personal

income tax preparation services that is not presented as described in this Article.

§ 13-20-1-7 PROHIBITED ACTS.

No tax preparer shall:

A. Require as a condition of offering or rendering tax preparation services to a consumer that the consumer utilize a refund settlement product;

B. Obtain the signature of a consumer on an incomplete tax return or authorizing document which contains blank spaces said tax preparer intends to later fill in.

C. Provide tax preparation services, or 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, without the individual tax preparer who provides the services having a current Preparer Tax Identification Number (PTIN) from the Internal Revenue Service.

D. Knowingly make a false or misleading oral or written statement or visual description in connection with the tax preparation services offered or provided or in the offering of any refund settlement product.

E. Conduct business in the city of Albuquerque without a city business license.

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

§ 13-20-1-8 CERTIFICATION OF ACKNOWLEDGMENT.

No later than February 1 of each year in which a tax preparer will engage in business pursuant to this Article, the tax preparer shall file with the Mayor or Mayor's designee a Certification of Acknowledgment declaring that the tax preparer has read each applicable provision of this Article and intends to comply in good faith. The Certification shall be on a form or declaration designated by the Mayor and available on the City website.

§ 13-20-1-9 ENFORCEMENT.

A. The City shall implement and enforce this Article.

B. The Mayor or the Mayor's designee is authorized to promulgate regulations, rules, and instructions to implement this Article.

C. If the City identifies conduct by a tax preparer that violates this Article, the City shall promptly notify the tax preparer of the violation, any penalty imposed, and any corrective actions required to avoid additional penalties.

1. The notification shall be in writing mailed to the tax preparer's place of

business within Albuquerque and sent to the email address provided by the tax preparer in their most recent Certification of Acknowledgment, if any.

2. If the tax preparer disputes the violation, the tax preparer may provide information showing that no violation occurred within 10 days of receipt of the notice. If the City finds based on the evidence provided that there is no violation, a penalty shall not be imposed.

3. For the following violations, the City shall not impose any penalty if the tax preparer proves that the violation has been cured within 15 days of receipt of the notice:

a. Section 13-20-1-4 (Mandatory Posting);

b. Section 13-20-1-8 (Certification of Acknowledgment);

c. Section 13-20-1-7 (E) (Business license);

d. Section 13-20-1-7 (C) (PTIN).

4. If the violation described in Subsection (C)(3) above is not cured within 15 days of receipt of the notice, each day the tax preparer continues the violation shall constitute a separate violation.

D. The penalty for each violation shall be no greater than $250 for the first violation, and no greater than $500 for each subsequent violation.

§ 13-20-1-10 CONSUMER'S RIGHT TO ACTION.

A consumer who has suffered damages by the failure of a tax preparer to act in accordance with specified sections of this Article has the right to seek relief from tax preparers as set forth below.

A. The remedies provided under this section are independent of any other remedies provided by law, including State laws prohibiting unfair, deceptive, or unconscionable acts or practices.

B. Any consumer who suffers damages as a result of a violation of any of the sections specified below 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.

C. A consumer may bring an action to recover damages when a tax preparer has failed to comply with any of the following provisions of this Article:

1. § 13-20-1-5 (Mandatory Disclosures);

2. § 13-20-1-6(A) (Requiring that the consumer be provided an opportunity to review the final return before filing);

3. § 13-20-1-6(B) (Requiring that consumer be provided with a copy of the final tax return);

4. § 13-20-1-6(C) (Requiring that consumer be provided a copy of any permanent schedules or worksheets prepared);

5. § 13-20-1-6(D) (Requiring return of consumer personal papers upon request);

6. § 13-20-1-6(E) (Allowing consumer to have tax refund deposited directly into their bank account or sent to them via check);

7. § 13-20-1-7(A) (Prohibition on requiring use of a refund settlement product as a condition of tax preparation services);

8. § 13-20-1-7(B) (Obtaining the signature of a consumer on incomplete tax return); or

9. § 13-20-1-7(D) (Knowingly making a false or misleading oral or written statement or visual description in connection with tax preparation services offered or provided or refund settlement products offered or provided).

D. Each failure to comply with the provisions set forth above in Section 13-20-1-10 (C) shall constitute a separate violation.

E. The court shall award attorney fees and costs to the party complaining of a violation 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. The remedies provided in this Section are not exclusive remedies nor must the consumer exhaust any administrative remedies provided under this Section or any other applicable law.

G. 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. Punitive damages;

3. Damages as specified by statute;

4. Attorney's fees and costs as specified by statute or as available at common law; or

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5. A hearing at which that party can present evidence in person.

H. Any provision in a written agreement or contract that violates this Article shall be void and unenforceable."

SECTION 3. SEVERABILITY. If any section, paragraph, sentence, clause, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 4. COMPILATION. SECTION 1 of this Ordinance shall amend, be incorporated in and compiled as part of the Revised Ordinances of Albuquerque, New Mexico, 1994. SECTION 2 of this Ordinance shall amend, be incorporated in, and compiled as part of the Revised Ordinances of Albuquerque, New Mexico, 1994 as a new Article 20 to be added to Chapter 13, and titled "Albuquerque Tax Preparer Ordinance."

SECTION 5. EFFECTIVE DATE. SECTION 1 of this Ordinance shall take effect five days after publication by title and general summary. SECTION 2 of this Ordinance shall take effect on January 1, 2023.

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