

Passed by the Nassau County Legislature on November 22, 2004. Voting: ayes: 19, nays: 0, abstained: 0. Became a law on November 24, 2004 with the approval of the Chief Deputy County Executive. Local Law 13 -04

A LOCAL LAW to amend Local Law 6-2004, to obligate tax preparers and similar person who offer, facilitate or obtain refund anticipation loans on any individual's behalf, to accurately represent the transaction as a loan, and to obligate tax preparers and similar persons who offer, facilitate or obtain refund anticipation checks on any individual's behalf to accurately represent the nature of the transaction, and to completely disclose all fees, costs, and interest related to such financial transaction.

BE IT ENACTED by the Legislature of Nassau County as follows:

Section 1. The Nassau County Administrative Code is amended to add a new Title D-10 to Chapter XXI, to read as follows:

Title D-10
Disclosure Requirements for Refund Anticipation Loans

§21-20.0 Legislative Intent.

The Legislature has found that tax preparers and other persons are increasingly offering to consumers "instant refunds", which essentially allow consumers to obtain what purports to be the proceeds of the consumers' anticipated tax refunds on an expedited basis. Tax preparers and others who offer such "instant refunds" often do not disclose complete and accurate information to consumers concerning these financial transactions. The Legislature has found that the characterization of these financial transactions as "instant refunds" is misleading, and that these transactions are instead loans or non-loan type bank products payable against the consumer's tax refund, which accrue interest, fees and other administrative costs. Consumers are often not aware that an "instant refund" being offered by the tax preparer and other persons is, in fact, a loan and/or a non-loan type bank product and that the consumer will be charged substantial fees and interest. Additionally, many consumers are under the impression that they are

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not liable for the full amount of the loan if they do not receive all or part of their tax refund from the IRS.

This Legislature has found that Refund Anticipation Loans (“RAL’s”) drain billions of dollars from the pockets of American consumers. Tax preparers, and facilitators of these transactions often target the working poor who receive the Earned Income Tax Credit (“EITC”). To be eligible for this credit, an individual’s income cannot exceed between \$11,230 and \$34,692 depending on individual eligibility. In 2002, fifty-five percent (55%) of those consumers who received RALs also received the EITC. These loans cost American workers \$1.14 billion in loan fees in 2002, plus an additional \$406 million in other fees. (Chi Chi Wu and Jean Ann Fox, “Quick Tax Loans Drain Over a Billion from American Workers”, National Consumer Law Center and Consumer Federation of America, January 29, 2004).

This Legislature seeks to provide consumers with certain protections, to require complete disclosure about these transactions and, to provide a private right of action to recover against those tax preparers, facilitators, and others who violate this law.

§20-20.1 Title and scope.

1. This law shall be known and cited as the Refund Anticipation Loan Disclosure Law. This law shall be liberally construed to effectuate its purpose. The purpose of this law is to protect consumers who enter into refund anticipation loan and refund anticipation check (“RAC”) transactions and to require tax preparers, facilitators, and other persons who offer or facilitate such loans to completely

disclose all fees and charges for RALs and RACs facilitated or processed in this County.

2. No person (including any tax preparers, facilitators, and other person) may individually or in conjunction or cooperation with another person: (a) solicit the execution of, process, receive, or accept an application or agreement for a RAL and/or RAC, or (b) in any other manner facilitate the making of a RAL and/or RAC unless the person has complied with the provisions of this section. **Section §20-20.2 Definitions.**

1. "Person" shall mean an individual, a firm, a partnership, an association, a corporation or another entity.
2. "Tax preparer" or "preparer" means a person, who for valuable consideration advises or assists or offers to advise or assist in the preparation of income tax returns for another.
3. "Facilitator" shall mean a person who individually or in conjunction or cooperation with another person: (i) solicits the execution of, processes, receives, or accepts an application or agreement for a RAL and/or RAC, or (ii) in any other manner substantially assists in the making of a RAL and/or RAC.
4. "Creditor" shall mean any person who makes a RAL or who takes an assignment of a RAL.
5. "Consumer" shall mean any natural person who, singly or jointly with another consumer, is solicited to apply for, applies for, or receives the proceeds of a RAL or RAC.

6. “Refund anticipation check” shall mean a check or other payment mechanism: (i) representing the proceeds of the consumer’s tax refund; (ii) that is not a loan; (iii) which was issued by a depository institution or other person that has or will have received a direct deposit of the consumer’s tax refund from the Internal Revenue Service; and (iv) for which the consumer has paid a fee or other consideration for such payment mechanism.
7. “Refund anticipation loan” shall mean a loan that is secured by and that creditor arranged to be repaid directly or indirectly from the proceeds of the consumer’s income tax refund and includes the payment of interest, and/or RAL fees by the consumer. A RAL shall also includes any sale, assignment, or purchase of a consumer’s tax refund at a discount or for a fee, whether the consumer is required to repay the buyer or assignee if the Internal Revenue Service denies or reduces the consumer’s tax refund.
8. “Refund anticipation loan fee” shall mean the charges, fees, or other consideration charged or imposed directly or indirectly by the tax preparer or facilitator for the making of or in connection with a RAL. This term includes any charge, fee, or other consideration for a deposit account, if the deposit account is used for receipt of the consumer’s tax refund to repay the amount owed on the loan. This term does not include any charge, fee, or other consideration usually charged or imposed by the facilitator or tax

preparer, in the ordinary course of business, such as fees for tax return preparation and fees for electronic filing of tax returns, if the same fees in the same amount are customarily charged to the facilitator's customers who do not receive RALs.

9. "Commissioner" shall mean the Nassau County Commissioner of Consumer Affairs.
10. "Consumer Affairs" shall mean the Nassau County Office of Consumer Affairs.
11. "County" shall mean the County of Nassau.

§20-20.3 Refund anticipation loans.

1. Any tax preparer or facilitator who advertises the availability of a RAL shall not directly or indirectly represent such a loan as a tax refund. Any advertisement which mentions, refers, relates, or discusses and/or describes a RAL, and/or proceeds of such loan must state explicitly and conspicuously that the monies being, referred to, related to, mentioned, discussed, described, and/or offered as represented in such advertisements, are in fact a loan, and not a tax refund, and that a refund anticipation fee and/or interest will be charged by the tax preparer, facilitator, or other person offering or issuing such loan. The advertisement must also disclose the name of the person, lender, tax preparer, creditor, or facilitator providing the RAL.

2. Before any consumer enters into a RAL transaction, the tax preparer, facilitator or creditor as applicable shall disclose to the consumer the following disclosure in writing, in English and Spanish, in a form separate from the application, containing a

legend, centered, in bold, capital letters and in 18 point type stating NOTICE; and stating the following language in at least 14-point type:

- THIS IS A LOAN.
- SPECIFICALLY, THIS IS A REFUND ANTICIPATION LOAN.
- YOU ARE NOT REQUIRED TO ENTER INTO THIS REFUND ANTICIPATION LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS INFORMATION.
- IF YOU DO SIGN A CONTRACT FOR A REFUND ANTICIPATION LOAN YOU WILL BE TAKING OUT A LOAN, AND YOU WILL BE RESPONSIBLE FOR REPAYMENT OF THE ENTIRE LOAN AMOUNT AND ALL RELATED COSTS AND FEES, REGARDLESS OF HOW MUCH MONEY YOU ACTUALLY RECEIVE IN YOUR TAX REFUND. IF YOUR TAX REFUND IS LESS THAN EXPECTED, YOU MUST STILL REPAY THE ENTIRE AMOUNT OF THE LOAN.
- IF YOU *DO NOT* TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU ARE ELIGIBLE TO RECEIVE A GROSS TAX REFUND OF APPROXIMATELY \$_[insert amount].
- IF YOU *DO* TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU WILL BE RESPONSIBLE TO PAY \$ [insert amount] IN INTEREST AND FEES FOR THE LOAN. AFTER THESE FEES ARE PAID, YOU WILL RECEIVE APPROXIMATELY \$ [insert amount].
- IF YOUR REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL FEES AND INTEREST.

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- THE ESTIMATED ANNUAL PERCENTAGE RATE OF YOUR REFUND ANTICIPATION LOAN IS [insert amount]%. THIS IS BASED ON THE ESTIMATED AMOUNT OF TIME YOU WILL HAVE BORROWED MONEY THROUGH THIS REFUND ANTICIPATION LOAN.
- IF YOU *DO* TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN EXPECT TO RECEIVE YOUR LOAN IN APPROXIMATELY ONE TO TWO DAYS.
- IF YOU *DO NOT* TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU CAN STILL RECEIVE YOUR TAX REFUND QUICKLY. IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND RECEIVE YOUR TAX REFUND THROUGH THE MAIL, YOU CAN EXPECT TO RECEIVE YOUR REFUND IN APPROXIMATELY FIFTEEN TO TWENTY-TWO DAYS. IF YOU FILE YOUR TAX RETURN ELECTRONICALLY AND HAVE YOUR TAX REFUND DIRECTLY DEPOSITED INTO A BANK ACCOUNT, YOU CAN EXPECT TO RECEIVE YOUR REFUND IN APPROXIMATELY EIGHT TO FIFTEEN DAYS.

3. In addition, the following disclosure must be made to the consumer in writing, in both English and Spanish, in connection with the RAC, in a form separate from the RAC, and from the application, containing a legend, centered, in bold, capital letters and in 18 point type stating NOTICE; and stating the following language in at least 14-point type:

YOU ARE PAYING [insert the amount of the fee] TO GET YOUR REFUND CHECK THROUGH [insert name of issuer of refund anticipation check]. YOU CAN AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN EIGHT TO FIFTEEN DAYS BY HAVING THE IRS DEPOSIT YOUR REFUND DIRECTLY INTO YOUR

OWN BANK ACCOUNT OR IN FIFTEEN TO TWENTY-TWO DAY BY HAVING THE IRS MAIL THE CHECK.

4. All language, figures, etc. to be inserted in §2 and §3 herein shall be inserted by the tax preparer or facilitator, as applicable.

5. In the event that the taxpayer does not understand English or Spanish, the tax preparer and or facilitator shall also provide a point-by-point oral explanation of the required disclosure in a language understood by the taxpayer and such explanation can be provided through the use of a translator.

6. It shall be the obligation of the tax preparer, or facilitator to complete the required disclosure accurately and thoroughly, inclusive of all relevant information to provide the required point-by-point oral explanation when necessary; and to ensure that the completed disclosure form is signed by the consumer before the consumer consummates the RAL and/or RAC transaction.

§20-20.4. Posting of Fee Schedule and Disclosures.

1. Every tax preparer, and facilitator who offers RALs and RAC's, shall display a a current fee schedule for RALs and RACs, and for the electronic filing of the consumer's tax return.
2. Every tax preparer, and/or facilitator who offers RALs and RAC's, shall also prominently display on each fee schedule: (i) a legend centered in bold, capital letters, and in one-inch letters stating: NOTICE CONCERNING REFUND ANTICIPATION LOANS; and (ii) the following verbatim statement: "When you take out a refund anticipation loan, you are borrowing money against your anticipated tax refund. If your tax refund is less than expected, you must still

repay the entire amount of the loan which includes interest and fees. If your refund is delayed, you may have to pay additional costs. You can have your tax return filed electronically and your refund directly deposited into your own bank account without obtaining a loan or paying loan fees.”

3. The postings required by this section shall be made in no less than 28-point type on a document measuring no less than 16 inches by 20 inches. The postings required in this section shall be displayed in a prominent location at each office where the tax preparer, or facilitator is processing the RALs and/or RAC’s.
4. No tax preparer or facilitator may process or caused to be processed a RAL or RAC, unless (i) the disclosure required by this section is displayed; (ii) the fee actually charged for the RAL or RAC is the same as the fee displayed on the schedule.

§20-20.5. Penalties.

Any violation under this section shall be deemed a deceptive trade practice and shall be subject to the penalties set forth in section 21-10.2 (4)(a) as amended by Local Law 25-2000. The Office of Consumer Affairs shall be charged with enforcing this law and shall promulgate the necessary rules and regulations for its implementation and enforcement.

§20-20.6. Civil Cause of Action.

Any person claiming to be injured by the failure of a tax preparer or facilitator to act in accordance with this subchapter shall have a cause of action against such tax preparer or

facilitator in any court of competent jurisdiction for any or all relief applicable under the law.

§20-20.7. Severability

If any provision, clause, sentence or paragraph of this local law, or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application if the provisions of this local law which can be given effect without the invalid provision or application and, to this end, the provisions of this local law are hereby declared to be severable.

Section 2. This local law shall take thirty (30) days after it shall have become a law.

APPROVED



County Executive

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