

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY13 | FY14 | FY15 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

Refund anticipation loans (RALs) are loans secured by and repaid directly from the proceeds of a consumer’s tax refund from the Internal Revenue Service (IRS). A refund anticipation check is a check or other payment mechanism from a tax refund and issued by a depository institution or other person that received the direct deposit of the tax refund. The fee or interest rate charged for the refund anticipation loan includes the charges, fees or other consideration imposed by the creditor for the making of the loan or in connection with the refund anticipation check.

This bill establishes licensure and registration requirements for persons soliciting the execution of or collecting or facilitating the making of refund anticipation loans or checks under the regulation of the Financial Institutions Division. The Act provides for consumer protections in disclosure of fees, interest rates, and other practices used by persons making refund anticipation loans or checks. The Act also provides private remedies for violations and for civil enforcement actions by the Attorney General.

Section 2. Definitions

Sets forth definitions, as used in the Act, for “ attorney”, “certified public accountant”, “commercial tax return preparer”, “commercial tax return preparation business”, “creditor”, “director”, “division”, “facilitator”, “electronic”, “enrolled agent”, “refund anticipation check”, “refund anticipation loan”, “refund anticipation loan fee”, “refund anticipation loan interest rate”, “registered public accountant”, and “tax return preparer”.

Section 3. License and Registration

Requires that any person soliciting the execution of a refund anticipation loan or check, collecting upon a refund anticipation loan or check, or facilitating the making of a refund anticipation loan or check must obtain a license from the director of the Financial Institutions Division. A “facilitator” must post a bond of \$50,000 to be available to pay damages and penalties for a violation of the Act. A commercial tax preparer must register with the division. This section exempts a banking corporation, savings and loan or credit union from the licensing and registration requirements.

Section 4. Application – Fees – Agent for Service of Process – Investigation – Qualifications
Subparagraphs A –C. Sets forth the application process for licensure and the information to be

provided in the application; fee for application is set at \$1,000 with a annual renewal in the amount of \$500. The applicant must identify and keep on file an appointed agent for service of process and provides for service in the event of non-compliance to the manager or person in charge of the registered office or place of business.

Subparagraph D. Requires that the director investigate the facts set forth in the application and the requirements of this section and may require applicant to provide additional information and specifies the procedure to do so.

Subparagraph E. Provides that failure to comply with director's request for supplemental information or willful furnishing of false information is sufficient grounds for denial of licensure or suspension or revocation.

Subparagraph F and G. Sets for the criteria and procedure for granting an original application for licensure or the denial of an application.

Subparagraph H and I. Requires that a written application for license renewal be filed on or before August 31 each year and sets for the criteria for review of the renewal application and the procedure for temporary extension of a license for 60 days pending hearing where the director fails to find a basis for renewal as provided.

Subparagraph J. Requires the division to maintain a list of licensees, tax preparers and commercial tax preparer businesses and establish a complaint process for aggrieved consumers.

Subparagraph K. In the determination of "fitness and character of an applicant", delegates to the director the discretion of what weight or consideration to give to the financial affiliation, control or ownership interest of any other entity engaged in tax preparation or lending of money "whose policies and practices as to rates of interest, charges and fees and general dealing with borrowers are questionable and would constitute violation of law".

Section 5. Judicial Review

Any licensee or person aggrieved by any act or order of the director may file an appeal in the district court.

Section 6. Tax Return Preparer – Preparation Services – Disclosures

Requires commercial tax preparer and business to: 1) post identification and qualification information for the consumer and sets for the specific information to be posted; 2) prominently and conspicuously post a fee schedule and provide a written estimate of total amount due for tax preparation services; and, shall provide a consumer with a receipt with itemized fees and other delineated information.

Section 7. Facilitator – Refund Anticipation Products – Disclosures

A "facilitator" is a person who solicits the execution of a refund anticipation loan or check; serves or collects upon a refund anticipation loan or check; or, facilitates the making of the loan or check. A facilitator is required to prominently and conspicuously post on the business premises the fee schedule showing current fees and charges for a refund anticipation loan or check and this section sets forth the specific requirements for the posted information, including a

specific disclosure that the refund anticipation loan is “borrowing money against your tax refund” and that if the refund is less than anticipated, additional charges may be owed, if delayed additional costs may be required, and disclosing that “ you can have your tax return filed electronically and your refund direct deposited into your own bank account without obtaining a loan or paying fees for an extra product”. The facilitator must also disclose examples of the interest rates charged and provide a specific disclosure (to be signed upon receipt) to the consumer including disclosure of interest rates, fees, estimated gross refund without taking out a loan, and other consumer protection information.

Section 8. Prohibited Acts

Prohibits a facilitator from representing the loan or check as a refund; charging a fee in excess of the fee charged by the creditor or bank that provides the loan or check; requiring a consumer to enter into a loan to complete a tax return; engage in a practice that operates a fraud on the consumer; arrange for any third party to charge additional interest or fee, misrepresent a material fact, fail to process the application promptly, take possession of or a security interest in any property other than the proceeds of the tax refund, make or facilitate a loan or check for which the interest rate is greater than forty percent, or make or facilitate a loan or check for an amount greater than \$1,500.

Section 9. Restraint of Prohibited Acts – Remedies for Violations

Provides that the attorney general may, in the public interest, bring an action for violations of the Refund Anticipation Loan Act and seek temporary or permanent injunctive relief and restitution on behalf of consumers.

Section 10. Settlements

Provides that the attorney general may enter into an assurance of discontinuance of a violation with a person who has engaged in the violation and sets forth the procedure and scope of AOD.

Section 11. Civil Penalties

In any action brought by the attorney general, if the court finds a person committed a willful and intentional violation of the Act, the court may award a civil penalty not exceeding five thousand dollars per violation.

Section 12. Civil Investigative Demands

Where the attorney general has reason to believe that a person has documents or materials relevant to the subject matter of an investigation of a violation of this Act, the attorney general may serve a civil investigative demand for production of such documents or material, such demand shall not be a matter of public record, except by order of the court. This section sets forth the information to be included in the CID, the procedure to follow, how service shall be made and the manner of production of the documents or material. The subject of a CID, may file a petition to set aside the demand, modify it or extend the time in which to reply and this petition may be filed in the district court.

Section 13. Remedies

Provides for private cause of action by a person likely to be damaged by a violation of the Act or who has suffered loss of money or property; provides for: injunctive relief; actual damages or the sum of \$1,000, whichever is greater; attorneys fees and costs if the party prevails; allows for class action relief; and sets for a procedure for early mediation of any claims.

Section 14. Construction

The relief and penalties provided under this Act are in addition to and supplement remedies and penalties provided under the common and other statutory law of New Mexico.

Section 15. The effective date is July 1, 2013.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

SIGNIFICANT LEGAL ISSUES

Both Refund anticipation loans and refund anticipation checks are presently unregulated in New Mexico.

Refund Anticipation Loans: Refund anticipation loans (RALs) are loans secured by and repaid directly from the proceeds of a consumer's tax refund from the Internal Revenue Service (IRS). The loan is typically made in conjunction with the preparation of the consumer's tax return and serve to provide a loan as an "advance" on the anticipated tax refund. Because RALs are usually made for a duration of about seven to fourteen days (the difference between when the RAL is made and when it is repaid by deposit of the taxpayer's refund), fees for these loans can translate into triple digit annual percentage rates (APRs). Refund anticipation loans are used mostly by low and moderate income consumers. Using the IRS process, most taxpayers could have their refund in two weeks or less. Nevertheless, RALs are aggressively marketed by income-tax preparation companies. They advertise "Instant Refunds" or "Quick Cash", and disguise the fact that they are selling advance loans on anticipated tax refunds. RALs are often marked by a failure to adequately disclose fees and interest rates.

The marketing and practices used by banks making RALs has been targeted by the FDIC for claims of federal law violations, resulting in a number of national settlements with RAL-lending national banks largely reducing the use of RALs *outside of New Mexico* and the payment of significant legal penalties. ***However, RALs continue to be marketed and used in New Mexico, particularly in the four corners area, with Native American tax payers targeted for these high interest loans.***

Refund Anticipation Checks (RAC): A refund anticipation check (RACs) is also a tax-time financial product offered by financial institutions. With RACs, the bank opens a temporary bank account into which the IRS direct deposits the refund check. Upon receipt of the tax refund, the bank issues the consumer a paper check or prepaid debit card with the RAC proceeds, or direct deposits the refund to the taxpayer's own account and closes the temporary account. For taxpayers who can receive direct deposit from the IRS into a bank account or onto a prepaid card, a RAC does not provide any advantage in terms of a faster refund, and the only reason to incur this added expense is to delay payment of tax preparation fees.

RACs can be subject to significant add-on fees and may represent a high-cost loan of the tax preparation fee. Tax preparation fees can often be opaque and expensive, with taxpayers unable to obtain estimates of fees to comparison shop. When taxpayers obtain a RAC to pay the price of tax preparation, the RAC is essentially a costly loan of the tax preparation fee. For example, paying \$30 to borrow a tax preparation fee of \$189 for two weeks equates to an APR of 414%.

According to the National Consumer Law Center's 2012 report on Refund Anticipation Loans, RALs have "drained hundreds of millions of dollars from the pockets of consumers and the U.S. Treasury. RAL lenders and preparers targeted the working poor, especially those who receive the Earned Income Tax Credit (EITC), a refundable credit intended to boost low-wage workers out of poverty." Targeting tax payers who qualify for the EITC results in the transfer of the financial benefit intended for the low-wage worker to a substantial profit for the lender of the high cost RAL or RAC.

Both RALs and RACs are marked by a lack of transparency around tax preparation fees. The NCLC reports that mystery shopper testing by consumer groups and others has found systemic problems in the ability of consumers to obtain information about how much tax preparation services will cost. There are numerous examples of preparers giving low-ball estimates on preparation fees or even refusing to provide testers with a quote. Typically, the tax prepare works in cooperation or coordination with the person or business that offers the RAL or RAC.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

The Financial Institutions Division will be required to implement licensure and regulation of covered persons and businesses.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

N/A

TECHNICAL ISSUES OR DRAFTING ERROR

OTHER SUBSTANTIVE LEGAL ISSUES

ALTERNATIVES TO ENACTING THIS BILL

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Consumers in New Mexico will continue to be targeted for refund anticipation loan and checks with Inadequate consumer protections and remedies for abusive and misleading practices.

AMENDMENTS NEEDED TO IMPROVE THIS BILL