

Senate Bill 865

Sponsored by Senator WALKER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes licensing qualifications and procedures for bookkeepers that keep and maintain tax returns and documents relating to tax returns. Requires bookkeepers to return tax returns and documents relating to tax returns to clients upon request. Requires bookkeepers to make copy of tax returns or documents relating to tax returns for client when bookkeeper makes copy for bookkeeper's purposes.

A BILL FOR AN ACT

1
2 Relating to the regulation of bookkeepers; creating new provisions; and amending ORS 673.605,
3 673.615, 673.640, 673.645, 673.655, 673.667 and 673.685.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 673.605 is amended to read:

6 673.605. As used in ORS 673.605 to 673.740 unless the context requires otherwise:

7 (1) "Board" means the State Board of Tax Practitioners created by ORS 673.725.

8 (2) **"Bookkeeper" means a person whom a tax consultant, taxpayer or tax preparer em-**
9 **loys or with whom a tax consultant, taxpayer or tax preparer contracts to keep and main-**
10 **tain tax returns and documents relating to tax returns, including receipts, books, records**
11 **and account statements.**

12 [(2)(a)] (3)(a) "Facilitator" means a person that individually or in conjunction or cooperation
13 with another person processes, receives or accepts for delivery an application for a refund antic-
14 ipation loan or a check in payment of refund anticipation loan proceeds or in any other manner
15 materially facilitates the making of a refund anticipation loan.

16 (b) "Facilitator" does not mean a financial institution as defined in ORS 706.008, a person who
17 has been issued a license under ORS chapter 725, an affiliate that is a servicer for a financial in-
18 stitution or for a person issued a license under ORS chapter 725, a person issued a certificate as a
19 certified public accountant or licensed as a public accountant by the Oregon Board of Accountancy,
20 or any person that acts solely as an intermediary and does not deal with a taxpayer in the making
21 of a refund anticipation loan.

22 [(3)] (4) "Lender" means a person that makes a refund anticipation loan with the person's own
23 funds or a line of credit or other funding from a financial institution as defined in ORS 706.008, but
24 does not include a financial institution as defined in ORS 706.008.

25 [(4)] (5) "Refund anticipation loan" means a loan that the lender arranges to be repaid directly
26 from the proceeds of the taxpayer's federal or state personal income tax refund.

27 [(5)(a)] (6)(a) "Refund anticipation loan fee" means the charges, fees or other consideration
28 charged or imposed by the lender or facilitator for the making of a refund anticipation loan.

29 (b) "Refund anticipation loan fee" does not mean any charge, fee or other consideration usually
30 charged or imposed by the facilitator in the ordinary course of business for nonloan services, in-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 cluding fees for tax return preparation and fees for electronic filing of tax returns.

2 [(6)] (7) "Tax consultant" means a person who is licensed under ORS 673.605 to 673.740 to pre-
3 pare or advise or assist in the preparation of personal income tax returns for another and for val-
4 uable consideration.

5 [(7)] (8) "Taxpayer" means an individual who files a federal or Oregon personal income tax re-
6 turn.

7 [(8)] (9) "Tax preparer" means any person who is licensed under ORS 673.605 to 673.740 as a tax
8 preparer.

9 **SECTION 2.** ORS 673.615 is amended to read:

10 673.615. Except as otherwise provided in ORS 673.605 to 673.740:

11 (1) A person may not prepare or advise or assist in the preparation of personal income tax re-
12 turns for another and for valuable consideration or represent that the person is so engaged unless
13 the person is licensed as a tax consultant under ORS 673.605 to 673.740.

14 (2) A tax preparer may prepare or advise or assist in the preparation of tax returns only under
15 the supervision of a tax consultant, or a person described in ORS 673.610 (2) or (4), and subject to
16 such conditions and limitations as the State Board of Tax Practitioners by rule may impose.

17 (3) A person may not be a facilitator of a refund anticipation loan without first being issued a
18 license as a tax consultant or tax preparer under ORS 673.640.

19 (4) **A person may not keep and maintain tax returns and documents relating to tax re-**
20 **turns, including receipts, books, records and account statements, for another and for valu-**
21 **able consideration unless the person is licensed as a bookkeeper under ORS 673.605 to 673.740.**

22 **SECTION 3.** Sections 4 to 7 of this 2009 Act are added to and made a part of ORS 673.605
23 to 673.740.

24 **SECTION 4.** (1) Every applicant for a bookkeeper's license must:

25 (a) Be at least 18 years of age;

26 (b) Have a high school diploma or a General Educational Development (GED) certificate;
27 and

28 (c) Pass the examination established by the State Board of Tax Practitioners under sub-
29 section (2) of this section.

30 (2) The board shall establish by rule an examination to test each applicant's knowledge
31 of federal and state laws, regulations and rules that concern bookkeeping practices.

32 **SECTION 5.** (1) To apply for a bookkeeper's license, a person shall:

33 (a) Fill out the form established by the State Board of Tax Practitioners under subsection
34 (2) of this section; and

35 (b) Remit the examination fee adopted by the board under ORS 673.685.

36 (2) The board shall establish by rule an application form and procedure by which a person
37 may apply for a bookkeeper's license.

38 **SECTION 6.** (1) If a client requests the return of a tax return or any document relating
39 to a tax return, including receipts, books, records and account statements, a bookkeeper
40 must return the tax return or the document to the client within a reasonable amount of
41 time.

42 (2) If a bookkeeper makes a copy of a tax return or of any document relating to a tax
43 return, the bookkeeper shall also make a copy for the client. The bookkeeper shall use the
44 same format and copying device to make the client's copy that the bookkeeper used to make
45 the initial copy.

1 **SECTION 7.** The State Board of Tax Practitioners may suspend, revoke or refuse or re-
2 new a bookkeeper's license or may reprimand any person licensed as a bookkeeper for:

3 (1) Violating section 6 of this 2009 Act;

4 (2) Being convicted of any crime that involves dishonesty or fraud;

5 (3) Failing to comply with the continuing education requirements specified in ORS
6 673.655;

7 (4) Failing to pay the fees adopted by the board under ORS 673.685; or

8 (5) Failing to pay a civil penalty incurred under ORS 673.735 within the time determined
9 by the board.

10 **SECTION 8.** ORS 673.640 is amended to read:

11 673.640. (1) The State Board of Tax Practitioners shall license [*as*] a tax consultant, [*or a*] tax
12 preparer **or bookkeeper** [*each applicant*] who:

13 (a) Demonstrates to the satisfaction of the board fitness for a license;

14 (b) Pays to the board an initial license fee as provided under ORS 673.685; and

15 (c) Has no disciplinary actions pending before the board.

16 (2) The board shall issue evidence of licensing to each person licensed.

17 **SECTION 9.** ORS 673.645 is amended to read:

18 673.645. (1) [*Any*] **Each** licensed tax consultant, [*and*] tax preparer **and bookkeeper** shall **an-**
19 **nually**:

20 (a) Apply to the State Board of Tax Practitioners [*and pay the fee for a renewal of the license.*]
21 **for license renewal; and**

22 (b) **Remit the license renewal fee adopted by the board under ORS 673.685.**

23 (2) [*The application shall be made annually, on or before a date established by the board by*
24 *rule.*] **The board shall prescribe the date by which a tax consultant, tax preparer or book-**
25 **keeper must renew a license.**

26 (3) The application shall be accompanied by evidence satisfactory to the board that the person
27 applying for renewal of the license has completed the continuing education [*required by*] **require-**
28 **ments established by the board under ORS 673.655.**

29 [(2)] (4) At least 30 days before the annual renewal date, the board shall notify the licensee that
30 the annual renewal application and fee are due.

31 [(3)] (5) Any license that is not renewed within 15 days after the annual renewal date shall
32 lapse.

33 [(4)] (6) The board may restore any lapsed license upon payment to the board of all past unpaid
34 renewal fees and a fee for restoration of a lapsed license [*that shall be provided*] **established by the**
35 **board** under ORS 673.685 and upon proof of compliance with any continuing education requirements
36 [*that may be*] adopted by the board by rule.

37 **SECTION 10.** ORS 673.655 is amended to read:

38 673.655. (1) Except as provided in subsection [(2)] (3) of this section, upon annual renewal of a
39 tax preparer's or tax consultant's license, [*each person licensed as a tax consultant or tax preparer*
40 *under ORS 673.605 to 673.740 shall submit evidence satisfactory*] **a person applying for renewal of**
41 **a tax consultant's or a tax preparer's license shall submit** to the State Board of Tax Practi-
42 tioners **evidence** that the person has completed at least 30 hours of instruction [*or seminar*] in
43 subjects related to income tax preparation since the preceding license renewal date. If the board
44 does not receive evidence that the continuing education requirement has been completed by the
45 applicant, the board [*shall*] **may** not renew the applicant's active license.

1 *[(2) The board may exempt a tax consultant or tax preparer from the continuing education required*
 2 *by this section upon application showing evidence satisfactory to the board of inability to comply be-*
 3 *cause of unusual or extenuating circumstances.]*

4 **(2) Except as provided in subsection (3) of this section, a person applying for renewal of**
 5 **a bookkeeper's license shall submit to the board evidence that the person has completed at**
 6 **least five hours of instruction in subjects related to federal and state laws, regulations and**
 7 **rules that concern bookkeeping practices. If the board does not receive evidence that the**
 8 **continuing education requirement has been completed by the applicant, the board may not**
 9 **renew the applicant's active license.**

10 **(3) The board may waive any portion of the requirements of this section for a licensee**
 11 **who submits satisfactory evidence that unusual or extenuating circumstances prevented the**
 12 **licensee from attending part or all of the continuing education requirements specified by this**
 13 **section.**

14 **SECTION 11.** ORS 673.667 is amended to read:

15 673.667. (1) Whenever a tax consultant or tax preparer ceases to engage in the preparation of
 16 or in advising or assisting in the preparation of personal income tax returns, the consultant or
 17 preparer may apply to the State Board of Tax Practitioners for **a license with an** inactive status.
 18 *[A license that is granted inactive status may be renewed upon payment of the license fee as provided*
 19 *under ORS 673.685. No proof that the continuing education required by ORS 673.655 has been fulfilled*
 20 *need be presented to the board for renewal of an inactive license.]*

21 *[(2) A license in inactive status may be reactivated upon payment of a reactivation fee, that shall*
 22 *be provided under ORS 673.685, and upon proof of compliance with such continuing education re-*
 23 *quirements as may be adopted by the board by rule.]*

24 **(2) Whenever a bookkeeper ceases to keep and maintain tax returns and documents re-**
 25 **lating to tax returns, the bookkeeper may apply to the board for a license with an inactive**
 26 **status.**

27 **(3) A licensee may renew a license with an inactive status by paying the fee adopted by**
 28 **the board under ORS 673.685.**

29 **(4) A licensee who has a license with an inactive status does not need to submit to the**
 30 **board evidence that the licensee has completed the continuing education requirements spec-**
 31 **ified in ORS 673.655 to renew the license unless the licensee is activating the inactive license.**

32 **(5) To activate an inactive license, a licensee shall:**

33 **(a) Pay a reactivation fee to the board, as provided for in ORS 673.685; and**

34 **(b) Comply with any continuing education requirements adopted by the board by rule.**

35 *[(3)]* **(6) A license in inactive status may be revoked or suspended by the board when conditions**
 36 **exist under which the board would have been authorized to revoke or suspend the license if it were**
 37 **active.**

38 *[(4)]* **(7) No person whose license is inactive shall act as a tax consultant, [or] as a tax preparer**
 39 **or as a bookkeeper.**

40 **SECTION 12.** ORS 673.685 is amended to read:

41 673.685. (1) The State Board of Tax Practitioners shall adopt by rule fees for:

42 (a) Application for examination for a tax consultant's license.

43 (b) Application for examination for a tax preparer's license.

44 **(c) Application for examination for a bookkeeper's license.**

45 *[(c)]* **(d) Issuance or renewal of a tax consultant's license.**

- 1 [(d)] (e) Issuance or renewal of a tax preparer’s license.
- 2 **(f) Issuance or renewal of a bookkeeper’s license.**
- 3 [(e)] (g) Issuance or renewal of a tax consultant’s inactive license.
- 4 [(f)] (h) Issuance or renewal of a tax preparer’s inactive license.
- 5 **(i) Issuance or renewal of a bookkeeper’s inactive license.**
- 6 [(g)] (j) Reactivation of a tax consultant’s inactive license [*or reactivation of*], a tax preparer’s
- 7 inactive license **or a bookkeeper’s inactive license.**
- 8 [(h)] (k) Restoration of a lapsed license.
- 9 [(i)] (L) Issuance or replacement of a duplicate license.
- 10 [(j)] (m) Issuance of a replacement or duplicate tax consultant certificate.
- 11 [(k)] (n) Registration or registration renewal for a sole proprietorship, partnership, corporation
- 12 or other legal entity.
- 13 [(L)] (o) Issuance or renewal of a combined tax consultant’s or tax preparer’s license and reg-
- 14 istration for a sole proprietorship, partnership, corporation or other legal entity. Eligibility for a
- 15 combined license shall be determined [*under rules adopted*] by the board **by rule.**
- 16 [(m)] (p) Annual registration of a branch office of a sole proprietorship, partnership, corporation
- 17 or other legal entity.
- 18 (2) The fees established by the State Board of Tax Practitioners under this section are subject
- 19 to the prior approval of the Oregon Department of Administrative Services and, if their adoption
- 20 occurs between regular sessions of the Legislative Assembly, a report to the Emergency Board. The
- 21 fees may not exceed the cost of administering the regulatory program of the State Board of Tax
- 22 Practitioners pertaining to the purposes for which the fees are established, as authorized by the
- 23 Legislative Assembly within the board’s budget, as that budget may be modified by the Emergency
- 24 Board.
- 25 **SECTION 13.** (1) Sections 4 to 7 of this 2009 Act and the amendments to ORS 673.605,
- 26 673.615, 673.640, 673.645, 673.655, 673.667 and 673.685 by sections 1, 2 and 8 to 12 of this 2009
- 27 Act become operative on January 1, 2011.
- 28 (2) Notwithstanding subsection (1) of this section, the State Board of Tax Practitioners
- 29 may take any action necessary before the operative date of sections 4 to 7 of this 2009 Act
- 30 and the amendments to ORS 673.605, 673.615, 673.640, 673.645, 673.655, 673.667 and 673.685 by
- 31 sections 1, 2 and 8 to 12 of this 2009 Act to enable the board to exercise, on and after the
- 32 operative date of sections 4 to 7 of this 2009 Act and the amendments to ORS 673.605, 673.615,
- 33 673.640, 673.645, 673.655, 673.667 and 673.685 by sections 1, 2 and 8 to 12 of this 2009 Act, all
- 34 the duties, functions and powers conferred on the board by sections 4 to 7 of this 2009 Act
- 35 and the amendments to ORS 673.605, 673.615, 673.640, 673.645, 673.655, 673.667 and 673.685 by
- 36 sections 1, 2 and 8 to 12 of this 2009 Act.
- 37