

Chapter 673 — Accountants; Tax Consultants and Preparers

2011 EDITION

TAX CONSULTANTS AND TAX PREPARERS

(Generally)

- 673.605 Definitions for ORS 673.605 to 673.740
- 673.610 Application of ORS 673.605 to 673.740
- 673.615 Prohibited acts; preparation of tax returns; refund anticipation loans

(Licensing)

- 673.625 Qualifications for tax consultant and tax preparer; examination
- 673.630 Tax consultant's application
- 673.635 Tax preparer's application
- 673.637 Licensing of person licensed in another state or enrolled to practice before Internal Revenue Service; requirements; fees
- 673.640 Issuance of licenses
- 673.643 Preparation of tax returns by corporation, firm or partnership; requirements; liability; prohibitions
- 673.645 Renewal of licenses; restoration of lapsed license; rules
- 673.655 Continuing education requirement; waiver
- 673.660 Licenses to be displayed
- 673.663 Use of title "tax consultant"
- 673.667 Inactive status; application; renewal; reactivation; revocation or suspension; prohibition; rules
- 673.685 Fees; rules
- 673.690 Tax consultant's records
- 673.695 Secretary of State as agent for service of process against nonresident; fee

- 673.697 Continuing authority of board
- 673.700 Disciplinary action; grounds
- 673.705 Prohibited acts
- 673.710 Names of tax preparers and other information furnished by Department of Revenue; use of information

(Refund Anticipation Loans)

- 673.712 Refund anticipation loan disclosures
- 673.715 Local government regulation of refund anticipation loans prohibited; preemption

(State Board of Tax Practitioners)

- 673.725 State Board of Tax Practitioners; term; qualification
- 673.730 Powers of board; rules
- 673.732 Cease and desist orders
- 673.735 Civil penalties
- 673.740 Educational program as remedy

CRIMINAL PENALTIES

- 673.990 Criminal penalties

TAX CONSULTANTS AND TAX PREPARERS

(Generally)

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

(1) “Board” means the State Board of Tax Practitioners created by ORS 673.725.

(2)(a) “Facilitator” means a person that individually or in conjunction or cooperation with another person processes, receives or accepts for delivery an application for a refund anticipation loan or a check in payment of refund anticipation loan proceeds or in any other manner materially facilitates the making of a refund anticipation loan.

(b) “Facilitator” does not mean a financial institution as defined in ORS 706.008, a person who has been issued a license under ORS chapter 725, an affiliate that is a servicer for a

financial institution or for a person issued a license under ORS chapter 725, a person issued a certificate as a certified public accountant or licensed as a public accountant by the Oregon Board of Accountancy, or any person that acts solely as an intermediary and does not deal with a taxpayer in the making of a refund anticipation loan.

(3) “Lender” means a person that makes a refund anticipation loan with the person’s own funds or a line of credit or other funding from a financial institution as defined in ORS 706.008, but does not include a financial institution as defined in ORS 706.008.

(4) “Refund anticipation loan” means a loan that the lender arranges to be repaid directly from the proceeds of the taxpayer’s federal or state personal income tax refund.

(5)(a) “Refund anticipation loan fee” means the charges, fees or other consideration charged or imposed by the lender or facilitator for the making of a refund anticipation loan.

(b) “Refund anticipation loan fee” does not mean any charge, fee or other consideration usually charged or imposed by the facilitator in the ordinary course of business for nonloan services, including fees for tax return preparation and fees for electronic filing of tax returns.

(6) “Tax consultant” means a person who is licensed under ORS 673.605 to 673.740 to prepare or advise or assist in the preparation of personal income tax returns for another and for valuable consideration.

(7) “Taxpayer” means an individual who files a federal or Oregon personal income tax return.

(8) “Tax preparer” means any person who is licensed under ORS 673.605 to 673.740 as a tax preparer. [1973 c.387 §1; 1975 c.464 §2; 1977 c.100 §1; 1985 c.559 §1; 2001 c.136 §9; 2005 c.331 §1]

673.610 Application of ORS 673.605 to 673.740. ORS 673.605 to 673.740 do not apply to:

(1) Any full or part-time employee hired to fill a permanent position, who in connection with the duties as an employee has the incidental duty of preparing income tax returns for the business of the employer only.

(2) Any attorney at law rendering services in the performance of the duties of an attorney at law.

(3) While acting as such, any fiduciary, or the regular employees thereof, acting on behalf of the fiduciary estate, the testator, trustor, grantor, or beneficiaries thereof.

(4) A certified public accountant who holds an active permit issued by any state, a public accountant holding a valid permit issued under ORS 673.100 or a public accounting firm registered in any state.

(5) Any employee of a certified public accountant, public accountant or registered public accounting firm described in subsection (4) of this section.

(6) Any person employed by a local, state or federal governmental agency but only in performance of official duties. [1973 c.387 §3; 1977 c.100 §1; 1999 c.322 §31; 2001 c.638 §14; 2007 c.178 §3]

673.615 Prohibited acts; preparation of tax returns; refund anticipation loans. Except as otherwise provided in ORS 673.605 to 673.740:

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

(2) A tax preparer may prepare or advise or assist in the preparation of tax returns only under

the supervision of a tax consultant, or a person described in ORS 673.610 (2) or (4), and subject to such conditions and limitations as the State Board of Tax Practitioners by rule may impose.

(3) A person may not be a facilitator of a refund anticipation loan without first being issued a license as a tax consultant or tax preparer under ORS 673.640. [1973 c.387 §2; 1975 c.464 §6; 1977 c.100 §4; 2005 c.331 §5]

(Licensing)

673.625 Qualifications for tax consultant and tax preparer; examination. (1) Every applicant for a license as a tax consultant and every applicant for licensing as a tax preparer must:

- (a) Be 18 years of age or older;
- (b) Possess a high school diploma or have passed an equivalency examination;
- (c) Present evidence satisfactory to the State Board of Tax Practitioners that the applicant has successfully completed at least 80 hours in basic personal income tax law, theory and practice at a school training session or educational institution approved by the board; and
- (d) Possess a preparer tax identification number issued by the Internal Revenue Service.

(2) In addition to the requirements of subsection (1) of this section, every applicant for licensing as a tax preparer must pass to the satisfaction of the board an examination. The examination must be constructed in a manner that in the judgment of the board measures the applicant's knowledge of Oregon and federal personal income tax law, theory and practice.

(3) In addition to the requirements of subsection (1) of this section, every applicant for licensing as a tax consultant must:

(a) Present evidence satisfactory to the board of active employment, as described in ORS 673.615 (2), as a tax preparer or employment in this or another state in a capacity that is, in the judgment of the board equivalent to that of a tax preparer or tax consultant, for not less than a cumulative total of 1,100 hours during at least two of the last five years. The board shall consider certification by a tax consultant or person described in ORS 673.610 (2) or (4) that the applicant was employed as a tax preparer under supervision for the period indicated in the certificate to be satisfactory evidence of the applicant's employment as a tax preparer for the period indicated. If an applicant has worked less than a cumulative total of 1,100 hours in at least two of the last five years, the board may consider the number of hours employed, the number of years employed, the number of tax returns prepared and whether the work involved contributed directly to the professional competence of the individual in determining if a tax preparer or tax consultant has met the work experience requirement.

(b) Pass to the satisfaction of the board an examination that is constructed in a manner that in the judgment of the board measures the applicant's knowledge of Oregon and federal personal income tax law, theory and practice. The examination for a tax consultant's license must be of a more exacting nature and require higher standards of knowledge of personal income tax law, theory and practice than the examination for a tax preparer's license.

(4) If, in the judgment of the board, an applicant has, in combination, the education and experience to qualify for a tax consultant's or preparer's license, but does not meet or cannot present evidence of strict compliance with the requirements of subsection (1)(c) or subsection (3)(a) of this section, the board may allow some of the applicant's education or experience to substitute one for the other. However, this subsection does not allow a waiver of, or substitution for, any qualifications needed for a tax consultant's or preparer's license other than those

described in subsection (1)(c) or subsection (3)(a) of this section. [1973 c.387 §4; 1975 c.464 §7; 1977 c.100 §5; 1985 c.559 §2; 1989 c.352 §1; 2011 c.95 §§1,2]

Note: The amendments to 673.625 by section 2, chapter 95, Oregon Laws 2011, become operative July 1, 2012, and apply to applications for licensing as a tax consultant submitted on or after July 1, 2012. See section 4, chapter 95, Oregon Laws 2011. The text that is operative until July 1, 2012, including amendments by section 1, chapter 95, Oregon Laws 2011, is set forth for the user's convenience.

673.625. (1) Every applicant for a license as a tax consultant and every applicant for licensing as a tax preparer must:

- (a) Be 18 years of age or older;
- (b) Possess a high school diploma or have passed an equivalency examination;
- (c) Present evidence satisfactory to the State Board of Tax Practitioners that the applicant has successfully completed at least 80 hours in basic personal income tax law, theory and practice at a school training session or educational institution approved by the board; and
- (d) Possess a preparer tax identification number issued by the Internal Revenue Service.

(2) In addition to the requirements of subsection (1) of this section, every applicant for licensing as a tax preparer must pass to the satisfaction of the board an examination. The examination must be constructed in a manner that in the judgment of the board measures the applicant's knowledge of Oregon and federal personal income tax law, theory and practice.

(3) In addition to the requirements of subsection (1) of this section, every applicant for licensing as a tax consultant must:

(a) Present evidence satisfactory to the board of active employment, as described in ORS 673.615 (2), as a tax preparer or employment in this or another state in a capacity that is, in the judgment of the board equivalent to that of a tax preparer or tax consultant, for not less than a cumulative total of 780 hours during at least two of the last five years. The board shall consider certification by a tax consultant or person described in ORS 673.610 (2) or (4) that the applicant was employed as a tax preparer under supervision for the period indicated in the certificate to be satisfactory evidence of the applicant's employment as a tax preparer for the period indicated. If an applicant has worked less than a cumulative total of 780 hours in at least two of the last five years, the board may consider the number of hours employed, the number of years employed, the number of tax returns prepared and whether the work involved contributed directly to the professional competence of the individual in determining if a tax preparer or tax consultant has met the work experience requirement.

(b) Pass to the satisfaction of the board an examination that is constructed in a manner that in the judgment of the board measures the applicant's knowledge of Oregon and federal personal income tax law, theory and practice. The examination for a tax consultant's license must be of a more exacting nature and require higher standards of knowledge of personal income tax law, theory and practice than the examination for a tax preparer's license.

(4) If, in the judgment of the board, an applicant has, in combination, the education and experience to qualify for a tax consultant's or preparer's license, but does not meet or cannot present evidence of strict compliance with the requirements of subsection (1)(c) or subsection (3)(a) of this section, the board may allow some of the applicant's education or experience to substitute one for the other. However, this subsection does not allow a waiver of, or substitution for, any qualifications needed for a tax consultant's or preparer's license other than those

described in subsection (1)(c) or subsection (3)(a) of this section.

673.630 Tax consultant's application. Every person desiring to be licensed as a tax consultant shall apply in writing to the State Board of Tax Practitioners. The application forms shall be approved by the board. Each application shall include or be accompanied by evidence, satisfactory to the board, that the applicant meets the qualifications prescribed in ORS 673.625. Each application shall be accompanied by the examination fee as provided under ORS 673.685. [1973 c.387 §5; 1975 c.464 §8; 1985 c.559 §3; 2005 c.21 §3]

673.635 Tax preparer's application. Every person desiring to be licensed as a tax preparer shall apply in writing to the State Board of Tax Practitioners. The application forms shall be approved by the board. Each application shall include or be accompanied by evidence, satisfactory to the board, that the applicant meets the qualifications prescribed in ORS 673.625. The application shall be accompanied by the examination fee as provided under ORS 673.685. [1973 c.387 §6; 1985 c.559 §4; 2005 c.21 §4]

673.637 Licensing of person licensed in another state or enrolled to practice before Internal Revenue Service; requirements; fees. (1) The State Board of Tax Practitioners may issue a license to an applicant for a license as a tax consultant or as a tax preparer who:

(a) Presents evidence satisfactory to the board that the applicant is licensed as a tax consultant or preparer in a state that has requirements for licensing substantially similar to the requirements for licensing in this state; and

(b) Has passed to the satisfaction of the board an examination covering Oregon personal income tax law, theory and practice, the provisions of ORS 673.605 to 673.740 and the code of professional conduct prescribed by the board.

(2) Notwithstanding ORS 673.625 (1) and (3), but as otherwise provided in ORS 673.605 to 673.740, the board shall license as a tax consultant any person who is, on the date of the application for a tax consultant's license, enrolled to practice before the Internal Revenue Service pursuant to 31 C.F.R. part 10 if the person has passed to the satisfaction of the board an examination covering Oregon personal income tax law, theory and practice, the provisions of ORS 673.605 to 673.740 and the code of professional conduct prescribed by the board.

(3) Except as otherwise provided in this section, an examination is not required for licensing under this section.

(4) Any person desiring to be licensed under this section shall make written application to the board and shall pay to the board at the time required by the board the examination and license fees provided by rule of the board. [1975 c.464 §16; subsection (2) enacted as 1977 c.100 §3; 1983 c.110 §5; 2011 c.95 §3]

673.640 Issuance of licenses. (1) The State Board of Tax Practitioners shall license as a tax consultant or a tax preparer each applicant who:

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

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

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

(2) The board shall issue evidence of licensing to each person licensed. [1973 c.387 §7; 1975 c.464 §11; 1985 c.559 §5; 2001 c.136 §6]

673.643 Preparation of tax returns by corporation, firm or partnership; requirements; liability; prohibitions. (1) A sole proprietorship, partnership, corporation or other legal entity, through individuals who are authorized within this state to render those services, may engage in the preparation, or in advising or assisting in the preparation of personal income tax returns for another and for valuable consideration and represent that it is so engaged if the entity:

(a) Registers annually with the State Board of Tax Practitioners in the manner prescribed by the board;

(b) Designates and reports in the manner prescribed by the board the authorized individual or individuals who are responsible for the tax return preparation activities and decisions of the entity; and

(c) Complies with ORS 673.605 to 673.740 and the rules adopted by the board.

(2) A sole proprietorship, partnership, corporation or other legal entity shall not be relieved of responsibility for the conduct or acts of its agents, employees or officers by reason of its compliance with subsection (1) of this section, nor shall a licensed tax consultant be relieved of responsibility for professional services performed by reason of employment by or relationship with such sole proprietorship, partnership, corporation or other legal entity.

(3) A sole proprietorship, partnership, corporation or other legal entity shall not engage in tax return preparation activities under subsection (1) of this section if the tax consultant, or the proprietor, a partner, a principal, an officer, director or manager, or a shareholder of the entity, is:

(a) An individual whose license as a tax consultant or tax preparer under ORS 673.605 to 673.740 is permanently revoked.

(b) An individual to whom the board has refused to issue or renew a license on the basis of dishonest conduct or conduct involving tax preparation.

(c) An individual whose occupational license, permit or registration has been revoked or refused by another state regulatory agency or the Internal Revenue Service for dishonest conduct or conduct involving tax preparation.

(d) A sole proprietorship, partnership, corporation or other legal entity prohibited from engaging in tax return preparation activities under subsection (1) of this section by reason of this subsection.

(4) The shareholders referred to in subsection (3) of this section are:

(a) If the corporation is publicly traded, a shareholder that owns more than 10 percent in value of the outstanding stock of the corporation.

(b) If the corporation is not publicly traded, any shareholder.

(5) For purposes of subsections (3) and (4) of this section, "publicly traded" means traded on an established securities market.

(6) If a sole proprietorship, partnership, corporation or other legal entity must sever a relationship in order that it may engage or may continue to engage in tax preparation activities in compliance with this section, the entity shall be allowed a reasonable time to sever the relationship. Except as provided under subsection (7) of this section, the time allowed to sever a relationship shall not exceed 180 days after the board gives notice that the severance is required. The notice shall include a statement affording an opportunity for hearing on the issue of severance. The notice and all proceedings conducted under this section shall be in accordance with ORS chapter 183.

(7) If a hearing is requested under subsection (6) of this section, or if an appeal is taken of the board's order following hearing, the board or court may allow additional time for the affected parties to comply with any order requiring severance. [1975 c.464 §10; 1989 c.351 §1; 1991

c.138 §1]

673.645 Renewal of licenses; restoration of lapsed license; rules. (1) Any licensed tax consultant and tax preparer shall apply to the State Board of Tax Practitioners and pay the fee for a renewal of the license. The application shall be made annually, on or before a date established by the board by rule. The application shall be accompanied by evidence satisfactory to the board that the person applying for renewal of the license has completed the continuing education required by ORS 673.655.

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

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

(4) The board may restore any lapsed license upon payment to the board of all past unpaid renewal fees and a fee for restoration of a lapsed license that shall be provided under ORS 673.685 and upon proof of compliance with any continuing education requirements that may be adopted by the board by rule. [1973 c.387 §8; 1975 c.464 §12; 1977 c.873 §7; 1985 c.559 §6; 1999 c.411 §1; 2003 c.29 §1]

673.650 [1973 c.387 §9; repealed by 1975 c.464 §26]

673.651 [1975 c.464 §14; repealed by 1977 c.842 §21 and 1977 c.873 §26]

673.655 Continuing education requirement; waiver. (1) Except as provided in subsection (2) of this section, upon annual renewal of a tax preparer's or tax consultant's license, each person licensed as a tax consultant or tax preparer under ORS 673.605 to 673.740 shall submit evidence satisfactory to the State Board of Tax Practitioners that the person has completed at least 30 hours of instruction or seminar in subjects related to income tax preparation since the preceding license renewal date. If the board does not receive evidence that the continuing education requirement has been completed by the applicant, the board shall not renew the applicant's active license.

(2) The board may exempt a tax consultant or tax preparer from the continuing education required by this section upon application showing evidence satisfactory to the board of inability to comply because of unusual or extenuating circumstances. [1973 c.387 §10; 1975 c.464 §17; 1985 c.559 §7]

673.660 Licenses to be displayed. Each tax consultant and preparer shall display the evidence of licensing issued to the tax consultant and preparer in accordance with rules adopted by the State Board of Tax Practitioners. [1973 c.387 §11; 1975 c.464 §18]

673.663 Use of title "tax consultant." (1) An individual may not assume or use the title or designation "tax consultant" unless the person is licensed as a tax consultant under ORS 673.605 to 673.740.

(2) A sole proprietorship, partnership, corporation or other legal entity may not assume or use the title or designation "tax consultant" unless the entity is in compliance with ORS 673.643. [1991 c.297 §2]

673.665 [1973 c.387 §12; repealed by 1975 c.464 §26]

673.667 Inactive status; application; renewal; reactivation; revocation or suspension; prohibition; rules. (1) Whenever a tax consultant or tax preparer ceases to engage in the preparation or in advising or assisting in the preparation of personal income tax returns, the consultant or preparer may apply to the State Board of Tax Practitioners for inactive status. A license that is granted inactive status may be renewed upon payment of the license fee as provided under ORS 673.685. No proof that the continuing education required by ORS 673.655 has been fulfilled need be presented to the board for renewal of an inactive license.

(2) A license in inactive status may be reactivated upon payment of a reactivation fee, that shall be provided under ORS 673.685, and upon proof of compliance with such continuing education requirements as may be adopted by the board by rule.

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

(4) No person whose license is inactive shall act as a tax consultant or as a tax preparer. [1975 c.464 §25; 1985 c.559 §8]

673.670 [1973 c.387 §13; repealed by 1975 c.464 §26]

673.675 [1973 c.387 §14; repealed by 1975 c.464 §26]

673.680 [1973 c.387 §15; repealed by 1975 c.464 §26]

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

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

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

(c) Issuance or renewal of a tax consultant's license.

(d) Issuance or renewal of a tax preparer's license.

(e) Issuance or renewal of a tax consultant's inactive license.

(f) Issuance or renewal of a tax preparer's inactive license.

(g) Reactivation of a tax consultant's inactive license or reactivation of a tax preparer's inactive license.

(h) Restoration of lapsed license.

(i) Issuance or replacement of a duplicate license.

(j) Issuance of a replacement or duplicate tax consultant certificate.

(k) Registration or registration renewal for a sole proprietorship, partnership, corporation or other legal entity.

(L) Issuance or renewal of a combined tax consultant's or tax preparer's license and registration for a sole proprietorship, partnership, corporation or other legal entity. Eligibility for a combined license shall be determined under rules adopted by the board.

(m) Annual registration of a branch office of a sole proprietorship, partnership, corporation or other legal entity.

(2) The fees established by the State Board of Tax Practitioners under this section are subject to the prior approval of the Oregon Department of Administrative Services and, if their adoption occurs between regular sessions of the Legislative Assembly, a report to the Emergency Board. The fees may not exceed the cost of administering the regulatory program of the State Board of

Tax Practitioners pertaining to the purposes for which the fees are established, as authorized by the Legislative Assembly within the board's budget, as that budget may be modified by the Emergency Board. [1973 c.387 §16; 1975 c.464 §19; 1985 c.377 §2; 1987 c.59 §3; 1991 c.138 §2; 1991 c.187 §8; 1997 c.260 §1; 2001 c.84 §1; 2007 c.273 §1]

673.690 Tax consultant's records. (1) Except as provided in this section, every person licensed as a tax consultant shall keep records of all personal income tax returns prepared by the person, or in the preparation of which advice or assistance of the person has been given. The records of the returns shall be kept for a period of not less than four years after the date of the preparation, advice or assistance.

(2) If a tax consultant is employed by another tax consultant, the records shall be kept by the employing tax consultant.

(3) If a tax consultant who has been designated as responsible for the tax return preparation activities and decisions of a partnership, corporation or other legal entity ceases to be connected with the partnership, corporation or other legal entity, the records shall be retained by the partnership, corporation or other legal entity. [1973 c.387 §17; 1975 c.464 §20; 2001 c.136 §7]

673.695 Secretary of State as agent for service of process against nonresident; fee. (1) The acceptance by a nonresident of a license as tax consultant or a tax preparer shall be considered equivalent to the appointment by the nonresident of the Secretary of State as attorney upon whom may be served any summons, process or pleading in any action or suit against the nonresident in any court of this state, arising out of any business done by the nonresident as a tax consultant or tax preparer in this state.

(2) The acceptance of a license shall be considered equivalent to any agreement by the nonresident that any summons, process or pleading in the action or suit may be made by leaving a copy thereof, with a fee of \$2, with the Office of Secretary of State. Such service shall be sufficient and valid personal service upon the defendant if notice of such service and a copy of the summons, process or pleading is sent forthwith by registered mail or by certified mail with return receipt by the plaintiff or the attorney of the plaintiff to the defendant at the most recent address furnished to the State Board of Tax Practitioners by the nonresident tax consultant or tax preparer or to the last-known address. An affidavit of the plaintiff or the attorney of the plaintiff of the mailing shall be appended to the summons, process or pleading and entered as a part of the return thereof. However, personal service outside of the state in accordance with the statute relating to personal service of summons outside of the state shall relieve the plaintiff from such mailing requirement.

(3) Any summons received or provided in this section shall require the defendant to appear and answer the complaint within four weeks after receipt thereof by the Secretary of State. The court in which the action or suit is brought may order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action. The fee of \$2 paid by the plaintiff to the Secretary of State shall be taxed as costs in favor of the plaintiff if the plaintiff prevails in the action. The Secretary of State shall keep a record of each summons, process or pleading served upon the Secretary of State under this section, showing the day and hour of service. [1973 c.387 §18; 1987 c.414 §67; 1991 c.249 §61]

673.697 Continuing authority of board. The lapsing, suspension or revocation of a license by operation of law or by order of the State Board of Tax Practitioners or by decision of a court

of law, or the voluntary surrender of a license by a licensee, shall not deprive the board of jurisdiction to proceed with any investigation of or any action or disciplinary proceeding against the licensee, or to revise or render null and void an order suspending or revoking the license. [1995 c.239 §2]

673.700 Disciplinary action; grounds. The State Board of Tax Practitioners may refuse to issue or renew a tax consultant or preparer's license, or may suspend or revoke a tax consultant or preparer's license, or may reprimand any person licensed as a tax consultant or tax preparer for:

(1) Violation of ORS 673.615, 673.705 or 673.712.

(2) Failure to keep the records required by ORS 673.690.

(3) Negligence or incompetence in tax consultant or tax preparer practice or when acting in the capacity of a tax preparer or tax consultant in another state, or under an exempt status or in preparation of the personal income tax return for another state or the federal government.

(4)(a) Conduct resulting in a conviction of a felony under the laws of any state or of the United States. However, such conduct may be considered only to the extent permissible under the provisions of ORS 670.280; or

(b) Conviction of any crime, an essential element of which is dishonesty, fraud or deception, under the laws of any state or of the United States.

(5) Conviction of willful failure to pay any tax or estimated tax, file any tax return, keep records or supply information required under the tax laws of any state or of the United States, or conviction of the willful making, rendering, delivery, disclosure, signing or verifying of any false or fraudulent list, return, account, statement or other document, or of supplying any false or fraudulent information, required under the tax laws of any state or of the United States.

(6) Failure to comply with continuing education requirements under ORS 673.655 or under ORS 673.667 unless such requirements have been waived by the board.

(7) Violation of the code of professional conduct prescribed by the board.

(8) Failure to pay any civil penalty incurred under ORS 673.735 within the time determined by the board.

(9) Cancellation, revocation or refusal to renew by any state or federal agency of, or entry of a consent order, stipulated agreement or judgment related to, the person's authority to practice law, to practice as a certified public accountant or a public accountant or to practice under other regulatory law in any state, or to practice as an enrolled agent, if the grounds for the cancellation, revocation, refusal to renew, consent order, stipulated agreement or judgment were related to income tax preparation or if dishonesty, fraud or deception was involved.

(10) Cancellation, revocation or refusal to renew by any state or federal agency of, or entry of a consent order, stipulated agreement or judgment related to, a business's authority to conduct operations related to the practice of law, certified public accountancy, public accountancy or other services provided under regulatory law in any state, or to provide enrolled agent services, if the grounds for the cancellation, revocation, refusal to renew, consent order, stipulated agreement or judgment involved the conduct or actions of the licensee or applicant and:

(a) Were related to income tax preparation; or

(b) Involved dishonesty, fraud or deception. [1973 c.387 §20; 1975 c.464 §21; 1983 c.110 §6; 1985 c.559 §9; 2001 c.136 §1; 2005 c.331 §6]

673.705 Prohibited acts. It is unlawful for any person to:

- (1) Obtain or attempt to obtain a license as a tax consultant or a tax preparer by any fraudulent representation.
- (2) Represent that the person is licensed as a tax consultant or a tax preparer if the person is not so licensed.
- (3) Present or attempt to use the license of another person.
- (4) Attempt to use a suspended, lapsed or revoked license.
- (5) Falsely impersonate a licensee under ORS 673.605 to 673.740.
- (6) Engage in dishonesty, fraud or deception relating to the preparation of personal income tax returns.
- (7) Violate a position of trust, including a position of trust outside the licensee's professional practice. [1973 c.387 §19; 1975 c.464 §22; 1983 c.110 §7; 2001 c.136 §2; 2005 c.21 §5]

673.710 Names of tax preparers and other information furnished by Department of Revenue; use of information. (1) If a personal income tax return is prepared by someone other than the taxpayer, the Department of Revenue may furnish to the State Board of Tax Practitioners a copy of that portion of the return that shows:

- (a) The name, business name and address of the preparer;
 - (b) The date of preparation; and
 - (c) The signature of the preparer.
- (2) In instances where the department or the board has reasonable grounds to believe the person preparing the return prepared it in violation of ORS 673.605 to 673.740, the department may furnish the following additional information:
- (a) The name and address of the taxpayer;
 - (b) The identifying number used on any form, report or schedule filed as part of the return;
 - (c) The tax year reported on the return, or any portion of the return; and
 - (d) The information described in ORS 314.835.
- (3) The board, its members, officers and employees, shall use the names and addresses furnished under this section solely in the enforcement of ORS 673.605 to 673.740 and shall not otherwise divulge or make known such information. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS 314.991 (2). [1975 c.425 §2; 1979 c.690 §15; 1999 c.106 §1; 2009 c.640 §4]

(Refund Anticipation Loans)

673.712 Refund anticipation loan disclosures. (1) Prior to a taxpayer's completion of an application for a refund anticipation loan, the facilitator shall clearly disclose in writing to the taxpayer on a form separate from the application:

- (a) A listing or table of refund anticipation loan fees and the annual percentage rates, as defined by the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., charged by the facilitator or lender for three or more representative refund anticipation loan amounts. For each loan amount, the schedule shall list separately the amount of each fee and the amount of interest charged by the facilitator or lender and the total amount of fees and interest charged.
- (b) That the refund anticipation loan is a loan and not the taxpayer's actual personal income tax refund.
- (c) That electronic filing of the taxpayer's tax return is available without applying for a refund anticipation loan.

(d) The average time announced by the appropriate taxing authority within which the taxpayer can expect to receive a refund if the taxpayer does not obtain a refund anticipation loan and the taxpayer's return is filed:

(A) Electronically and the refund is directly deposited in the taxpayer's bank account; or

(B) By mail and the refund is directly deposited in the taxpayer's bank account or mailed to the taxpayer.

(e) That the Internal Revenue Service does not guarantee:

(A) That the full amount of the anticipated refund will be paid; or

(B) A specific date on which the taxpayer will receive the refund.

(f) That the taxpayer is responsible for repayment of the loan and related fees in the event the tax refund is not paid or is not paid in full.

(g) The estimated time within which the proceeds of the loan will be paid to the taxpayer if the loan is approved.

(h) The fees charged by the facilitator or lender if the refund anticipation loan is not approved.

(2) Prior to entering into a refund anticipation loan agreement, the facilitator shall clearly disclose to the taxpayer:

(a) The estimated total fees for the loan.

(b) The estimated annual percentage rate, as defined by the federal Truth in Lending Act, 15 U.S.C. 1601 et seq., for the loan. [2005 c.331 §3]

673.715 Local government regulation of refund anticipation loans prohibited; preemption. (1) A unit of a local government, as defined in ORS 174.116, may not adopt any rule, regulation, code or ordinance to restrict or limit any requirements under ORS 673.605 to 673.740 relating to refund anticipation loans.

(2) ORS 673.605 to 673.740 supersede and preempt any rule, regulation, code or ordinance of any unit of a local government, as defined in ORS 174.116, relating to refund anticipation loans. [2005 c.331 §4]

(State Board of Tax Practitioners)

673.725 State Board of Tax Practitioners; term; qualification. (1) There is created a State Board of Tax Practitioners. The board shall consist of seven members who shall be appointed by the Governor.

(2) The term of office for each member shall be three years and no member shall be eligible for appointment to more than three terms of office, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor or reappoint the incumbent member if the incumbent member is eligible for reappointment. The Governor shall fill vacancies on the board as they may occur and a member appointed to fill a vacancy shall serve the unexpired term of the predecessor.

(3)(a) Of the members of the board six shall be licensed as tax consultants under ORS 673.605 to 673.740. Each of the six shall have been engaged in the preparation of personal income tax returns for another and for a valuable consideration for no less than five years.

(b) One member of the board shall be a member of the general public.

(4) All appointments of members of the board by the Governor are subject to confirmation by the Senate pursuant to section 4, Article III, Oregon Constitution. [1973 c.387 §21; 1983 c.110]

§2; 1987 c.414 §68; 1993 c.744 §249a; 1997 c.21 §3; 2001 c.136 §8]

673.730 Powers of board; rules. The State Board of Tax Practitioners shall have the following powers, in addition to the powers otherwise granted by ORS 673.605 to 673.740, and shall have all powers necessary or proper to carry the granted powers into effect:

(1) To determine qualifications of applicants for licensing as a tax consultant or a tax preparer in this state; to cause examinations to be prepared, conducted and graded; and to issue licenses to qualified applicants upon their compliance with ORS 673.605 to 673.740 and the rules of the board.

(2)(a) To restore the license of any tax consultant or preparer whose license has been suspended or revoked.

(b) The power of the board to suspend any license under ORS 673.700 includes the power to restore:

(A) At a time certain; or

(B) When the person subject to suspension fulfills conditions for reissuance set by the board.

(c) The power of the board to restore a license under paragraph (a) of this subsection specifically includes the power to restore a license suspended or revoked for the reason that the person has been convicted of a crime. In making a determination to restore a license, the board shall consider the relationship of the facts which supported the conviction to the code of professional conduct and all intervening circumstances in determining the fitness of the person to receive or hold a tax consultant's or tax preparer's license.

(3) To investigate alleged violations of ORS 673.605 to 673.740, or any rule or order adopted thereunder. The board may keep information gathered pursuant to an investigation by the board confidential until there is a final order or determination by the board, unless disclosure is considered necessary by the board for the investigation or prosecution of an alleged violation of ORS 673.605 to 673.740, or any rule or order adopted thereunder. The board may keep personal financial information gathered pursuant to an investigation by the board confidential after a final order or determination by the board, unless disclosure is considered necessary by the board for the investigation or prosecution of an alleged violation of ORS 673.605 to 673.740, or any rule or order adopted thereunder. For purposes of this subsection, personal financial information includes but is not limited to tax returns.

(4) To enforce the provisions of ORS 673.605 to 673.740 and to exercise general supervision over tax consultant and tax preparer practice.

(5) To issue an order directed to a person to cease and desist from any violation or threatened violation of ORS 673.615, 673.643, 673.705 or 673.712, or any rule or order adopted thereunder, if the board has reason to believe that a person has been engaged, is engaging or is about to engage in any violation of ORS 673.615, 673.643, 673.705 or 673.712, or any rule or order adopted thereunder.

(6) To assess civil penalties within a cease and desist order issued under subsection (5) of this section if the board has reason to believe that a person has been engaged or is engaging in any violation of ORS 673.615, 673.643, 673.705 or 673.712, or any rule or order adopted thereunder. The civil penalty may not exceed \$5,000 per violation.

(7) To formulate a code of professional conduct for tax consultants and tax preparers.

(8) To assess against the licensee or any other person found guilty of violating any provision of ORS 673.605 to 673.740, or any rule or order adopted thereunder, in addition to any other sanctions, the costs associated with the disciplinary or other action taken by the board.

(9) To order that any person who has engaged in or is engaging in any violation of ORS 673.605 to 673.740, or any rule or order adopted thereunder, shall offer to rescind and pay restitution to anyone harmed by the violation who seeks rescission.

(10) To adopt rules pursuant to ORS chapter 183 necessary to carry out the provisions of ORS 673.605 to 673.740. [1973 c.387 §22; 1975 c.464 §23; 1983 c.110 §8; 1985 c.559 §10; 2001 c.136 §3; 2005 c.331 §7; 2007 c.273 §2]

673.732 Cease and desist orders. (1) Except as provided in ORS 183.745, upon entry of a cease and desist order under ORS 673.605 to 673.740, the State Board of Tax Practitioners shall promptly give appropriate notice of the cease and desist order as provided in this section. The notice shall state that a hearing will be held on the cease and desist order if written demand for a hearing is filed with the board within 20 days after the date of service of the cease and desist order.

(2) If timely demand for a hearing is filed under subsection (1) of this section, the board shall hold a contested case hearing on the cease and desist order as provided by ORS chapter 183. In the event of a contested case hearing, the civil penalties assessed in the cease and desist order are suspended until issuance of a final order, but the remaining provisions of the cease and desist order shall remain in full force and effect until issuance of the final order. A person is not entitled to judicial review of a cease and desist order unless the person has made a timely demand for a hearing.

(3) After the hearing, the board shall enter a final order vacating, modifying or affirming the cease and desist order.

(4) A person aggrieved by a cease and desist order of the board that was the subject of a timely application for hearing shall be entitled to judicial review of the cease and desist order under ORS chapter 183.

(5) A judgment of a reviewing court under ORS chapter 183 does not bar the board from thereafter vacating or modifying a cease and desist order involved in the proceeding for review, or entering any new order, for a proper cause that was not decided by the reviewing court.

(6) The board may file an injunction against a person for failure to comply with a cease and desist order. [2001 c.136 §5; 2003 c.576 §540]

Note: 673.732 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 673 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

673.735 Civil penalties. (1) Any person who violates any provision of ORS 673.605 to 673.740, any rule adopted thereunder or any order of the State Board of Tax Practitioners shall incur, in addition to any other penalty provided by law, a civil penalty in an amount of not more than \$5,000 for each violation. The amount of penalty shall be determined by the board after taking into consideration the gravity of the violation, the previous record of the violator in complying, or in failing to comply, with the provisions of ORS 673.605 to 673.740 or the rules adopted thereunder, and other considerations as the board considers appropriate.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) All penalties recovered under this section shall be paid into the General Fund to be credited to the board for use in carrying out the provisions of this section. [1973 c.387 §24; 1983 c.110 §9; 1983 c.696 §26; 1991 c.734 §70; 2001 c.136 §4]

673.740 Educational program as remedy. Under appropriate circumstances, as a further remedy in a proceeding which may or may not result in imposition of a civil penalty under ORS 673.735 or in cancellation, suspension, revocation or refusal to renew a tax consultant's or preparer's license, the State Board of Tax Practitioners may impose the requirement of successful participation and completion of an educational program specified by the board as correction or as a condition to reissuance, restoration, retention or renewal of the license. [1993 c.191 §2]

CRIMINAL PENALTIES

673.990 Criminal penalties. (1) Violation of any of the provisions of ORS 673.310, 673.320, 673.345 or 673.350 is a Class A misdemeanor. Whenever the Oregon Board of Accountancy has reason to believe that any person is liable to punishment under this subsection it may certify the facts to the Attorney General, who may, in the discretion of the Attorney General, cause appropriate proceedings to be brought.

(2) Violation of any provision of ORS 673.605 to 673.740, or any rule adopted thereunder, is a misdemeanor. [Subsection (2) enacted as 1973 c.387 §25; 1975 c.440 §22; 1999 c.322 §32]
