

6076

2009-2010 Regular Sessions

I N A S S E M B L Y

February 24, 2009

Introduced by M. of A. JEFFRIES -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to enacting the refund anticipation loan act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 22 of the tax law is amended by adding a new part 7
2 to read as follows:

3 PART VII--REFUND ANTICIPATION LOAN

4 SECTION 700. SHORT TITLE AND SCOPE.

5 700-A. DEFINITIONS.

6 700-B. REGISTRATION; BOND REQUIREMENT.

7 700-C. REGISTRATION PROCEDURE.

8 700-D. POSTING OF FEE SCHEDULE AND DISCLOSURES.

9 700-E. APPLICATION DISCLOSURES.

10 700-F. REQUIREMENTS FOR REFUND ANTICIPATION LOANS AND REFUND
11 ANTICIPATION CHECKS.

12 700-G. PROHIBITED ACTIVITIES.

13 700-H. FACILITATOR DUTY TO CONSUMER.

14 700-I. PRIVATE RIGHT OF ACTION.

15 700-J. RULES.

16 700-K. RECORD KEEPING; ANNUAL REPORTS.

17 700-L. SEVERABILITY.

18 S 700. SHORT TITLE AND SCOPE. (A) SHORT TITLE. THIS PART SHALL BE
19 KNOWN AND MAY BE CITED AS THE "REFUND ANTICIPATION LOAN ACT". THIS ACT
20 SHALL BE LIBERALLY CONSTRUED TO EFFECTUATE ITS PURPOSE. THE PURPOSE OF
21 THIS ACT IS TO PROTECT CONSUMERS WHO ENTER INTO REFUND ANTICIPATION LOAN
22 AND REFUND ANTICIPATION CHECK TRANSACTIONS AND TO LIMIT FEES FOR REFUND
23 ANTICIPATION LOANS FACILITATED IN NEW YORK STATE. THIS PART IS TO BE
24 CONSTRUED AS A CONSUMER PROTECTION STATUTE FOR ALL PURPOSES.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 (B) SCOPE. NO PERSON (INCLUDING ANY OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE) MAY INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH ANOTHER PERSON: (1) SOLICIT THE EXECUTION OF, PROCESS, RECEIVE, OR ACCEPT AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK, OR (2) IN ANY OTHER MANNER FACILITATE THE MAKING OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK UNLESS SUCH PERSON HAS COMPLIED WITH THE PROVISIONS OF THIS PART. THE PROVISIONS OF THIS PART SHALL APPLY TO ANY PERSON WHO SEEKS TO EVADE ITS APPLICABILITY BY ANY DEVICE, SUBTERFUGE, OR PRETENSE WHATSOEVER.

10 (C) EXEMPTION. THIS ACT SHALL NOT APPLY TO CREDIT UNIONS, AS CHARTERED BY THE NATIONAL CREDIT UNION ADMINISTRATION OR THE NEW YORK STATE BANKING DEPARTMENT.

13 S 700-A. DEFINITIONS. THE FOLLOWING DEFINITIONS APPLY IN THIS PART:

14 (A) "APPLICANT" SHALL MEAN A PERSON WHO APPLIES FOR REGISTRATION AS A FACILITATOR OF REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS.

16 (B) "BANKING DEPARTMENT" SHALL MEAN THE STATE OF NEW YORK BANKING DEPARTMENT.

18 (C) "BANKING SUPERINTENDENT" SHALL MEAN THE SUPERINTENDENT OF BANKS FOR THE STATE OF NEW YORK.

20 (D) "CONSUMER" SHALL MEAN ANY NATURAL PERSON WHO, SINGLY OR JOINTLY WITH ANOTHER CONSUMER, IS SOLICITED FOR, APPLIES FOR, OR RECEIVES THE PROCEEDS OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK.

23 (E) "CREDITOR" SHALL MEAN ANY PERSON WHO MAKES A REFUND ANTICIPATION LOAN OR WHO TAKES AN ASSIGNMENT OF A REFUND ANTICIPATION LOAN.

25 (F) "FACILITATOR" SHALL MEAN A PERSON WHO INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH ANOTHER PERSON: (1) SOLICITS THE EXECUTION OF, PROCESSES, RECEIVES, OR ACCEPTS AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK, OR (2) IN ANY OTHER MANNER FACILITATES THE MAKING OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK.

31 (G) "PERSON" SHALL MEAN AN INDIVIDUAL, A FIRM, A PARTNERSHIP, AN ASSOCIATION, A CORPORATION, OR ANOTHER ENTITY.

33 (H) "REFUND ANTICIPATION CHECK" SHALL MEAN A CHECK, CASH PAYMENT, DEBIT CARD, STORE CREDIT, OR OTHER PAYMENT MECHANISM: (1) REPRESENTING THE PROCEEDS OF THE CONSUMER'S TAX REFUND; (2) WHICH WAS ISSUED BY A DEPOSITORY INSTITUTION OR OTHER PERSON THAT RECEIVED A DIRECT DEPOSIT OF THE CONSUMER'S TAX REFUND OR TAX CREDITS; AND (3) FOR WHICH THE CONSUMER HAS PAID A FEE OR OTHER CONSIDERATION FOR SUCH PAYMENT MECHANISM.

39 (I) "REFUND ANTICIPATION LOAN" SHALL MEAN A LOAN THAT IS SECURED BY OR THAT THE CREDITOR ARRANGES TO BE REPAYED DIRECTLY OR INDIRECTLY FROM THE PROCEEDS OF THE CONSUMER'S INCOME TAX REFUND OR TAX CREDITS. A REFUND ANTICIPATION LOAN ALSO INCLUDES ANY SALE, ASSIGNMENT, OR PURCHASE OF A CONSUMER'S TAX REFUND AT A DISCOUNT OR FOR A FEE, WHETHER OR NOT THE CONSUMER IS REQUIRED TO REPAY THE BUYER OR ASSIGNEE IF THE INTERNAL REVENUE SERVICE DENIES OR REDUCES THE CONSUMER'S TAX REFUND.

46 (J) "REFUND ANTICIPATION LOAN FEE" SHALL MEAN THE CHARGES, FEES, OR OTHER CONSIDERATION CHARGED OR IMPOSED DIRECTLY OR INDIRECTLY BY THE CREDITOR OR FACILITATOR FOR THE MAKING OF OR IN CONNECTION WITH A REFUND ANTICIPATION LOAN. SUCH 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. SUCH TERM DOES NOT INCLUDE ANY CHARGE, FEE, OR OTHER CONSIDERATION USUALLY CHARGED OR IMPOSED BY THE FACILITATOR 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

1 CHARGED TO THE FACILITATOR'S CUSTOMERS WHO DO NOT RECEIVE REFUND ANTIC-
2 IPATION LOANS OR REFUND ANTICIPATION CHECKS.

3 (K) "REFUND ANTICIPATION LOAN INTEREST RATE" SHALL MEAN THE INTEREST
4 RATE FOR A REFUND ANTICIPATION LOAN CALCULATED AS FOLLOWS: THE TOTAL
5 AMOUNT OF REFUND ANTICIPATION LOAN FEES DIVIDED BY THE LOAN AMOUNT
6 (MINUS ANY LOAN FEES), THEN DIVIDED BY THE NUMBER OF DAYS IN THE LOAN
7 TERM, THEN MULTIPLIED BY THREE HUNDRED SIXTY-FIVE AND EXPRESSED AS A
8 PERCENTAGE. THE TOTAL AMOUNT OF THE REFUND ANTICIPATION LOAN FEE USED IN
9 SUCH CALCULATION SHALL INCLUDE ALL REFUND ANTICIPATION LOAN FEES AS
10 DEFINED IN SUBSECTION (J) OF THIS SECTION. IF A DEPOSIT ACCOUNT IS
11 ESTABLISHED OR MAINTAINED IN WHOLE OR IN PART FOR THE PURPOSE OF RECEIV-
12 ING THE CONSUMER'S TAX REFUND TO REPAY THE AMOUNT OWED ON A REFUND
13 ANTICIPATION LOAN: (1) THE MATURITY OF THE LOAN FOR THE PURPOSE OF
14 DETERMINING THE REFUND ANTICIPATION LOAN INTEREST RATE SHALL BE ASSUMED
15 TO BE THE ESTIMATED DATE WHEN THE TAX REFUND WILL BE DEPOSITED IN THE
16 DEPOSIT ACCOUNT; AND (2) ANY FEE CHARGED TO THE CONSUMER FOR SUCH DEPOS-
17 IT ACCOUNT SHALL BE CONSIDERED A LOAN FEE AND SHALL BE INCLUDED IN THE
18 CALCULATION OF THE REFUND ANTICIPATION LOAN INTEREST RATE. IF NO DEPOSIT
19 ACCOUNT IS ESTABLISHED OR MAINTAINED FOR THE REPAYMENT OF THE LOAN, THE
20 MATURITY OF THE LOAN SHALL BE ASSUMED TO BE THE ESTIMATED DATE WHEN THE
21 TAX REFUND IS RECEIVED BY THE CREDITOR.

22 (1) "REGISTRANT" SHALL MEAN A PERSON WHO IS REGISTERED AS A FACILITA-
23 TOR OF REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS UNDER
24 THIS PART.

25 S 700-B. REGISTRATION; BOND REQUIREMENT. (A) REGISTRATION REQUIREMENT.
26 NO PERSON MAY INDIVIDUALLY OR IN CONJUNCTION OR COOPERATION WITH ANOTHER
27 PERSON FACILITATE IN ANY WAY, SOLICIT THE EXECUTION OF, PROCESS,
28 RECEIVE, OR ACCEPT AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION
29 LOAN OR REFUND ANTICIPATION CHECK WITHOUT FIRST BEING REGISTERED WITH
30 THE BANKING SUPERINTENDENT AND POSTING A BOND IN ACCORDANCE WITH THE
31 PROCEDURES PROVIDED IN THIS PART.

32 (B) BOND. EACH FACILITATOR MUST POST A BOND IN THE AMOUNT OF ONE
33 HUNDRED THOUSAND DOLLARS PER LOCATION, WHICH MUST CONTINUE IN EFFECT FOR
34 FIVE YEARS AFTER THE FACILITATOR CEASES OPERATION IN NEW YORK STATE.
35 SUCH BOND MUST BE AVAILABLE TO PAY FOR THE COST OF EXAMS, ANY UNPAID
36 REGISTRATION FEES, AND ANY DAMAGES AND PENALTIES TO CONSUMERS HARMED BY
37 ANY VIOLATION OF THIS PART.

38 (C) EXEMPTION. THIS SECTION DOES NOT APPLY TO A PERSON DOING BUSINESS
39 AS A BANK, THRIFT, SAVINGS ASSOCIATION, OR CREDIT UNION, UNDER THE LAWS
40 OF THE UNITED STATES OR OF NEW YORK STATE. A FACILITATOR IS NOT EXEMPT
41 MERELY BECAUSE THE CREDITOR DOES BUSINESS AS A BANK, THRIFT, SAVINGS
42 ASSOCIATION, OR CREDIT UNION, UNDER THE LAWS OF THE UNITED STATES OR OF
43 NEW YORK STATE.

44 S 700-C. REGISTRATION PROCEDURE. (A) INITIAL REGISTRATION. ANY PERSON
45 DOING BUSINESS IN THIS STATE AS A FACILITATOR SHALL BE REGISTERED IN
46 THIS STATE AS PROVIDED IN THIS SECTION. AN APPLICATION TO BECOME REGIS-
47 TERED AS A FACILITATOR SHALL BE IN WRITING, UNDER OATH, AND IN A FORM
48 PRESCRIBED BY THE BANKING SUPERINTENDENT. THE APPLICATION SHALL CONTAIN
49 ALL INFORMATION PRESCRIBED BY THE BANKING SUPERINTENDENT. EACH APPLICA-
50 TION FOR REGISTRATION SHALL BE ACCOMPANIED BY A FEE OF FIVE HUNDRED
51 DOLLARS, PAYABLE TO THE BANKING SUPERINTENDENT, FOR EACH OFFICE WHERE
52 THE REGISTRANT INTENDS TO FACILITATE REFUND ANTICIPATION LOANS OR REFUND
53 ANTICIPATION CHECKS.

54 (1) THE BANKING SUPERINTENDENT SHALL REQUIRE THAT APPLICANTS FOR
55 LICENSES ISSUED PURSUANT TO THIS PART BE FINGERPRINTED FOR THE PURPOSE
56 OF SECURING CRIMINAL HISTORY RECORDS FROM THE STATE DIVISION OF CRIMINAL

1 JUSTICE SERVICES. THE APPLICANT SHALL PAY A PROCESSING FEE AS REQUIRED
2 BY THE STATE DIVISION OF CRIMINAL JUSTICE SERVICES. FINGERPRINTS SHALL
3 BE TAKEN OF THE INDIVIDUAL OWNER IF THE APPLICANT IS A SOLE PROPRIETOR-
4 SHIP; THE GENERAL PARTNERS OF THE APPLICANT IS A PARTNERSHIP; AND THE
5 OFFICERS, PRINCIPALS, DIRECTORS, AND STOCKHOLDERS OWNING MORE THAN TEN
6 PERCENT OF THE OUTSTANDING STOCK OF THE CORPORATION IF THE APPLICANT IS
7 A CORPORATION. ANY PERSON REQUIRED TO BE FINGERPRINTED UNDER THIS PARA-
8 GRAPH SHALL FURNISH TO THE DEPARTMENT THREE CURRENT PASSPORT-SIZE PHOTO-
9 GRAPHS OF SUCH PERSON. NOTWITHSTANDING THE FOREGOING, THE SUPERINTENDENT
10 NEED NOT REQUIRE APPLICANTS FOR LICENSES REQUIRED UNDER THIS PART TO BE
11 FINGERPRINTED IF CRIMINAL HISTORY RECORDS CONCERNING SUCH APPLICANTS ARE
12 NOT AVAILABLE FROM THE STATE DIVISION OF CRIMINAL JUSTICE SERVICES.

13 (2) UPON THE FILING OF AN APPLICATION FOR REGISTRATION, IF THE BANKING
14 SUPERINTENDENT FINDS THAT THE RESPONSIBILITY AND GENERAL FITNESS OF THE
15 APPLICANT ARE SUCH AS TO COMMAND THE CONFIDENCE OF THE COMMUNITY AND TO
16 WARRANT BELIEF THAT THE BUSINESS OF FACILITATING REFUND ANTICIPATION
17 LOANS OR REFUND ANTICIPATION CHECKS WILL BE OPERATED WITHIN THE PURPOSES
18 OF THIS PART, THE BANKING SUPERINTENDENT SHALL REGISTER THE APPLICANT
19 AND SHALL ISSUE AND TRANSMIT TO THE APPLICANT A CERTIFICATE ATTESTING TO
20 THE REGISTRATION. IF THE BANKING SUPERINTENDENT DOES NOT SO FIND, HE OR
21 SHE SHALL NOT REGISTER THE APPLICANT AND SHALL NOTIFY THE APPLICANT OF
22 THE REASONS FOR THE DENIAL.

23 (3) UPON RECEIPT OF A CERTIFICATE OF REGISTRATION, THE APPLICANT IS
24 REGISTERED UNDER THIS PART AND MAY ENGAGE IN THE BUSINESS OF FACILITAT-
25 ING REFUND ANTICIPATION LOANS AND REFUND ANTICIPATION CHECKS AT THE
26 OFFICES IDENTIFIED ON THE APPLICATION FOR REGISTRATION.

27 (B) RENEWAL, SUSPENSION AND REVOCATION. IN ADDITION TO ANY OF THE
28 POWERS THAT MAY BE EXERCISED BY THE BANKING SUPERINTENDENT PURSUANT TO
29 THIS PART, THE BANKING SUPERINTENDENT, AFTER NOTICE AND AN OPPORTUNITY
30 TO BE HEARD, MAY REFUSE TO ISSUE OR RENEW, OR MAY SUSPEND OR REVOKE, A
31 LICENSE REQUIRED UNDER THIS PART IF THE APPLICANT OR LICENSEE, OR ANY OF
32 ITS PRINCIPALS, OFFICERS OR DIRECTORS, OR ANY OF ITS STOCKHOLDERS OWNING
33 MORE THAN TEN PERCENT OF THE OUTSTANDING STOCK OF THE CORPORATION HAS
34 BEEN CONVICTED OF A CRIME WHICH, IN THE JUDGMENT OF THE BANKING SUPER-
35 INTENDENT, HAS A DIRECT RELATIONSHIP TO SUCH PERSON'S FITNESS OR ABILITY
36 TO PERFORM ANY OF THE ACTIVITIES FOR WHICH A LICENSE IS REQUIRED UNDER
37 THIS PART OR HAS BEEN CONVICTED OF ANY OTHER CRIME WHICH, IN ACCORDANCE
38 WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, WOULD PROVIDE A
39 JUSTIFICATION FOR THE BANKING SUPERINTENDENT TO REFUSE TO ISSUE OR
40 RENEW, OR TO SUSPEND OR REVOKE, SUCH LICENSE. THE BANKING SUPERINTEN-
41 DENT MAY, ON GOOD CAUSE SHOWN, OR WHERE THERE IS A SUBSTANTIAL RISK OF
42 PUBLIC HARM, SUSPEND ANY REGISTRATION OR DELETE THE NAME OF ANY REGIS-
43 TRANT FOR A PERIOD NOT EXCEEDING THIRTY DAYS, PENDING INVESTIGATION.
44 "GOOD CAUSE", AS USED IN THIS SUBSECTION, SHALL EXIST ONLY WHEN THE
45 REGISTRANT HAS DEFAULTED OR IS LIKELY TO DEFAULT IN PERFORMING ITS
46 FINANCIAL ENGAGEMENTS OR ENGAGES IN DISHONEST OR INEQUITABLE PRACTICES
47 WHICH MAY CAUSE SUBSTANTIAL HARM TO THE PERSONS AFFORDED THE PROTECTION
48 OF THIS PART.

49 (1) CEASE AND DESIST ORDER. WHENEVER THE BANKING DEPARTMENT BELIEVES
50 OR HAS NOTICE THAT ANY ACTION OF A FACILITATOR MAY BE IN VIOLATION OF
51 THIS PART OR THE RULES OR REGULATIONS PROMULGATED UNDER THIS PART, OR
52 THAT THE FACILITATOR HAS ENGAGED IN AN UNFAIR OR DECEPTIVE ACT OR PRAC-
53 TICE, THE BANKING SUPERINTENDENT SHALL GIVE REASONABLE NOTICE TO THE
54 FACILITATOR OF THE SUSPECTED VIOLATION OR UNFAIR OR DECEPTIVE ACT OR
55 PRACTICE, AND AN OPPORTUNITY FOR THE FACILITATOR TO BE HEARD. IF THE
56 BANKING SUPERINTENDENT FINDS THAT AN ACTION OF THE FACILITATOR IS IN

1 VIOLATION OF THIS PART OR THE RULES OR REGULATIONS PROMULGATED UNDER
2 THIS PART OR THAT THE FACILITATOR HAS ENGAGED IN AN UNFAIR OR DECEPTIVE
3 ACT OR PRACTICE, THE BANKING SUPERINTENDENT SHALL ORDER THE FACILITATOR
4 TO CEASE AND DESIST FROM THE ACTION. THE BANKING SUPERINTENDENT MAY MAKE
5 INVESTIGATIONS, SUBPOENA WITNESSES, AND REQUIRE AUDITS AND REPORTS AND
6 SHALL MAKE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

7 IF THE FACILITATOR CONTINUES TO ENGAGE IN AN ACTION IN VIOLATION OF
8 THE BANKING SUPERINTENDENT'S ORDER TO CEASE AND DESIST FROM THE ACTION,
9 THE FACILITATOR SHALL BE SUBJECT TO A PENALTY OF UP TO FIVE THOUSAND
10 DOLLARS FOR EACH ACTION IT TAKES IN VIOLATION OF THE BANKING SUPERINTEN-
11 DENT'S ORDER.

12 (2) REVOCATION OF REGISTRATION. UPON THE FINDING THAT A REGISTRANT HAS
13 (I) ENGAGED IN A COURSE OF CONDUCT THAT IS IN VIOLATION OF THIS PART OR
14 THE RULES OR REGULATIONS PROMULGATED UNDER THIS PART OR (II) CONTINUED
15 TO ENGAGE IN AN ACTION IN VIOLATION OF A CEASE AND DESIST ORDER OF THE
16 BANKING SUPERINTENDENT THAT HAS NOT BEEN STAYED UPON APPLICATION OF THE
17 REGISTRANT, THE BANKING SUPERINTENDENT MAY REVOKE THE REGISTRATION OF
18 THE REGISTRANT TEMPORARILY OR PERMANENTLY AT THE DISCRETION OF THE BANK-
19 ING SUPERINTENDENT. NO REVOCATION, SUSPENSION, OR SURRENDER OF ANY
20 REGISTRATION SHALL RELIEVE THE REGISTRANT FROM CIVIL OR CRIMINAL LIABIL-
21 ITY FOR ACTS COMMITTED PRIOR THERETO.

22 (3) RENEWAL FEES. EACH REGISTRATION AS A FACILITATOR OF REFUND ANTIC-
23 IPATION LOANS AND REFUND ANTICIPATION CHECKS SHALL EXPIRE ON DECEMBER
24 THIRTY-FIRST FOLLOWING THE DATE IT WAS ISSUED, UNLESS IT IS RENEWED FOR
25 THE SUCCEEDING YEAR. BEFORE THE REGISTRATION EXPIRES, THE REGISTRANT MAY
26 RENEW THE REGISTRATION BY FILING WITH THE BANKING SUPERINTENDENT AN
27 APPLICATION FOR RENEWAL IN THE FORM AND CONTAINING ALL INFORMATION
28 PRESCRIBED BY THE BANKING SUPERINTENDENT. EACH APPLICATION FOR RENEWAL
29 OF REGISTRATION SHALL BE ACCOMPANIED BY A FEE OF FIVE HUNDRED DOLLARS
30 FOR EACH OFFICE WHERE THE REGISTRANT INTENDS TO FACILITATE REFUND ANTIC-
31 IPATION LOANS OR REFUND ANTICIPATION CHECKS DURING THE SUCCEEDING YEAR.

32 (4) RENEWAL CRITERION. UPON THE FILING OF AN APPLICATION FOR RENEWAL
33 OF REGISTRATION UNDER THIS PART, THE BANKING SUPERINTENDENT SHALL RENEW
34 THE REGISTRATION, PROVIDED THAT NO REGISTRATION SHALL BE ISSUED IF THE
35 BANKING SUPERINTENDENT FINDS THAT THE REGISTRANT HAS VIOLATED THIS PART
36 OR DETERMINES THAT THE FITNESS OF THE REGISTRANT OR THE OPERATIONS OF
37 THE REGISTRANT WOULD NOT SUPPORT REGISTRATION OF THE REGISTRANT UNDER
38 SUBSECTION (A) OF THIS SECTION. IF THE BANKING SUPERINTENDENT MAKES SUCH
39 A FINDING OR DETERMINATION, HE OR SHE SHALL SO NOTIFY THE REGISTRANT,
40 STATING THE REASONS FOR THE DETERMINATION.

41 (C) COMPLAINT PROCESS. THE BANKING SUPERINTENDENT SHALL MAINTAIN A
42 LIST OF REGISTRANTS WHICH SHALL BE AVAILABLE TO INTERESTED PERSONS AND
43 THE PUBLIC. THE BANKING SUPERINTENDENT SHALL CREATE A TOLL-FREE TELE-
44 PHONE NUMBER WHEREBY CONSUMERS MAY OBTAIN INFORMATION ABOUT REGISTRANTS
45 AND COMPLAINT FORMS. THE BANKING SUPERINTENDENT SHALL ESTABLISH A
46 COMPLAINT PROCESS WHEREBY AN AGGRIEVED CONSUMER OR ANY MEMBER OF THE
47 PUBLIC MAY FILE A COMPLAINT AGAINST A REGISTRANT OR NON-REGISTRANT WHO
48 VIOLATES ANY PROVISION OF THIS PART. ALL COMPLAINTS SHALL BE CONSIDERED
49 PUBLIC RECORDS PURSUANT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW WITH
50 THE EXCEPTION OF THE COMPLAINANT'S NAME, ADDRESS, OR OTHER PERSONAL
51 IDENTIFYING INFORMATION. THE BANKING SUPERINTENDENT SHALL HOLD A HEARING
52 PURSUANT TO SUBSECTION (A) OF THIS SECTION UPON THE REQUEST OF A PARTY
53 TO THE COMPLAINT. THE BANKING SUPERINTENDENT MAY AFTER SUCH HEARING
54 ISSUE CEASE AND DESIST ORDERS PURSUANT TO PARAGRAPH ONE OF SUBSECTION
55 (B) OF THIS SECTION, OR SUSPEND OR REVOKE A REGISTRATION AS PROVIDED IN
56 PARAGRAPH TWO OF SUBSECTION (B) OF THIS SECTION.

1 (D) DISPLAY OF CERTIFICATE. EACH REGISTRANT SHALL PROMINENTLY DISPLAY
2 A CERTIFICATE ISSUED UNDER THIS PART IN EACH PLACE OF BUSINESS IN THE
3 STATE WHERE THE REGISTRANT FACILITATES THE MAKING OF REFUND ANTICIPATION
4 LOANS OR REFUND ANTICIPATION CHECKS. IT SHALL BE UNLAWFUL FOR ANY
5 REGISTRANT TO CARRY ON HIS OR HER BUSINESS AT ANY PLACE OTHER THAN THE
6 ONE DESIGNATED IN SUCH LICENSE.

7 (E) ANY PERSON WHO SHALL VIOLATE ANY OF THE PROVISIONS OF THIS PART OR
8 ANY RULE OR REGULATION ISSUED UNDER THIS PART SHALL BE GUILTY OF A CLASS
9 A MISDEMEANOR AND UPON THE FIRST CONVICTION BE SUBJECT TO A FINE OF AT
10 LEAST FIVE HUNDRED DOLLARS AND UPON ANY SUBSEQUENT CONVICTION BE SUBJECT
11 TO A FINE OF UP TO FIVE THOUSAND DOLLARS AND/OR IMPRISONMENT OF AT LEAST
12 FIFTEEN DAYS.

13 (F) FOR THE PURPOSE OF DISCOVERING VIOLATIONS OF THIS PART OR SECURING
14 INFORMATION LAWFULLY REQUIRED BY HIM OR HER UNDER THIS PART, THE BANKING
15 SUPERINTENDENT MAY AT ANY TIME, AND AS OFTEN AS HE OR SHE MAY DETERMINE,
16 EITHER PERSONALLY OR BY A PERSON DULY DESIGNATED BY HIM OR HER, INVESTI-
17 GATE THE BUSINESS AND EXAMINE THE BOOKS, ACCOUNTS, RECORDS, AND FILES
18 USED THEREIN OF EVERY REGISTRANT. FOR THAT PURPOSE THE BANKING SUPER-
19 INTENDENT AND HIS OR HER DULY DESIGNATED REPRESENTATIVE SHALL HAVE FREE
20 ACCESS TO THE OFFICES AND PLACES OF BUSINESS, BOOKS, ACCOUNTS, PAPERS,
21 RECORDS, FILES, SAFES AND VAULTS OF ALL SUCH REGISTRANTS. THE BANKING
22 SUPERINTENDENT AND ANY PERSON DULY DESIGNATED BY HIM OR HER SHALL HAVE
23 AUTHORITY TO REQUIRE THE ATTENDANCE OF AND TO EXAMINE UNDER OATH ALL
24 PERSONS WHOSE TESTIMONY HE OR SHE MAY REQUIRE RELATIVE TO SUCH BUSINESS.
25 THE EXPENSES INCURRED IN MAKING ANY EXAMINATION PURSUANT TO THIS SECTION
26 SHALL BE ASSESSED AGAINST AND PAID BY THE REGISTRANT SO EXAMINED, EXCEPT
27 THAT TRAVELING AND SUBSISTENCE EXPENSES SO INCURRED SHALL BE CHARGED
28 AGAINST AND PAID BY REGISTRANTS IN SUCH PROPORTIONS AS THE BANKING
29 SUPERINTENDENT SHALL DEEM JUST AND REASONABLE, AND SUCH PROPORTIONATE
30 CHARGES SHALL BE ADDED TO THE ASSESSMENT OF THE OTHER EXPENSES INCURRED
31 UPON EACH EXAMINATION. UPON WRITTEN NOTICE BY THE BANKING SUPERINTENDENT
32 OF THE TOTAL AMOUNT OF SUCH ASSESSMENT, THE REGISTRANT SHALL BECOME
33 LIABLE FOR AND SHALL PAY SUCH ASSESSMENT TO SUCH SUPERINTENDENT.

34 S 700-D. POSTING OF FEE SCHEDULE AND DISCLOSURES. (A) EVERY FACILITA-
35 TOR SHALL PROMINENTLY DISPLAY AT EACH OFFICE WHERE REFUND ANTICIPATION
36 LOANS OR REFUND ANTICIPATION CHECKS ARE FACILITATED A SCHEDULE SHOWING
37 THE CURRENT FEES FOR REFUND ANTICIPATION LOANS FACILITATED AT SUCH
38 OFFICE, FOR REFUND ANTICIPATION CHECKS FACILITATED AT SUCH OFFICE, AND
39 FOR ELECTRONIC FILING OF THE CONSUMER'S TAX RETURN.

40 (B) EVERY FACILITATOR SHALL DISPLAY ON EACH FEE SCHEDULE EXAMPLES OF
41 THE REFUND ANTICIPATION LOAN INTEREST RATES FOR REFUND ANTICIPATION
42 LOANS OF TWO HUNDRED DOLLARS, FIVE HUNDRED DOLLARS, ONE THOUSAND
43 DOLLARS, ONE THOUSAND FIVE HUNDRED DOLLARS, TWO THOUSAND DOLLARS, AND
44 FIVE THOUSAND DOLLARS. THE REFUND ANTICIPATION LOAN INTEREST RATE SHALL
45 BE CALCULATED AS SET FORTH IN SUBSECTION (K) OF SECTION SEVEN HUNDRED-A
46 OF THIS PART.

47 (C) EVERY FACILITATOR SHALL ALSO PROMINENTLY DISPLAY ON EACH FEE SCHE-
48 DULE: (1) A LEGEND, CENTERED, IN BOLD, CAPITAL LETTERS, AND IN ONE-INCH
49 LETTERS STATING: NOTICE CONCERNING REFUND ANTICIPATION LOANS; AND (2)
50 THE FOLLOWING VERBATIM STATEMENT: "WHEN YOU TAKE OUT A REFUND ANTIC-
51 IPATION LOAN, YOU ARE BORROWING MONEY AGAINST YOUR TAX REFUND. IF YOUR
52 TAX REFUND IS LESS THAN EXPECTED, YOU MUST STILL REPAY THE ENTIRE AMOUNT
53 OF THE LOAN. IF YOUR REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL
54 COSTS. YOU CAN GET YOUR REFUND IN ABOUT 10 DAYS WITHOUT GETTING A LOAN.
55 YOU CAN HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR REFUND DIRECT
56 DEPOSITED INTO YOUR OWN BANK ACCOUNT WITHOUT OBTAINING A LOAN OR PAYING

1 FEES FOR AN EXTRA PRODUCT. IF YOU DO NOT HAVE A BANK ACCOUNT, YOU CAN
2 SIGN UP FOR A BASIC BANKING ACCOUNT AT ANY NEW YORK BANK FOR A MINIMAL
3 FEE."

4 (D) THE POSTINGS REQUIRED BY THIS SECTION SHALL BE MADE IN NO LESS
5 THAN TWENTY-EIGHT-POINT TYPE ON A DOCUMENT MEASURING NO LESS THAN
6 SIXTEEN INCHES BY TWENTY INCHES. THE POSTINGS REQUIRED IN THIS SECTION
7 SHALL BE DISPLAYED IN A PROMINENT LOCATION AT EACH OFFICE WHERE THE
8 FACILITATOR IS FACILITATING REFUND ANTICIPATION LOANS.

9 (E) NO FACILITATOR MAY FACILITATE A REFUND ANTICIPATION LOAN OR REFUND
10 ANTICIPATION CHECK UNLESS (1) THE DISCLOSURES REQUIRED BY THIS SECTION
11 ARE DISPLAYED; (2) THE FEE ACTUALLY CHARGED FOR THE REFUND ANTICIPATION
12 LOAN OR REFUND ANTICIPATION CHECK IS THE SAME AS THE FEE DISPLAYED ON
13 THE SCHEDULE; AND (3) FOR REFUND ANTICIPATION LOANS, THE REFUND ANTIC-
14 IPATION LOAN INTEREST RATE DOES NOT EXCEED TWENTY-FIVE PERCENT. THE
15 REFUND ANTICIPATION LOAN INTEREST RATE SHALL BE CALCULATED AS SET FORTH
16 IN SUBSECTION (K) OF SECTION SEVEN HUNDRED-A OF THIS PART.

17 S 700-E. APPLICATION DISCLOSURES. AT THE TIME A CONSUMER APPLIES FOR
18 A REFUND ANTICIPATION LOAN OR CHECK, THE FACILITATOR OR CREDITOR SHALL
19 DISCLOSE TO THE CONSUMER ON A FORM SEPARATE FROM THE APPLICATION IN
20 FOURTEEN-POINT TYPE, UNLESS OTHERWISE NOTED:

21 (A) THE FEE FOR THE REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION
22 CHECK.

23 (B) THE FEE FOR ELECTRONIC FILING OF A TAX RETURN.

24 (C) ANY AND ALL OTHER FEES CHARGED FOR THE TRANSACTION, INCLUDING, BUT
25 NOT LIMITED TO, FINANCE CHARGES, ADMINISTRATIVE FEES, TAX PREPARATION
26 FEES, AND ACCOUNT CREATION FEES.

27 (D) THE TIME WITHIN WHICH THE PROCEEDS OF THE REFUND ANTICIPATION LOAN
28 OR CHECK WILL BE PAID TO THE CONSUMER IF THE LOAN OR CHECK IS APPROVED.

29 (E) FOR REFUND ANTICIPATION LOANS, THE FOLLOWING DISCLOSURES: (1) A
30 LEGEND, CENTERED, IN BOLD, CAPITAL LETTERS, AND IN EIGHTEEN-POINT TYPE
31 STATING: NOTICE; AND (2) THE FOLLOWING VERBATIM STATEMENT: "THIS IS A
32 LOAN. THIS LOAN IS BORROWING MONEY AGAINST YOUR TAX REFUND. IF YOUR TAX
33 REFUND IS LESS THAN EXPECTED, YOU MUST STILL REPAY THE ENTIRE AMOUNT OF
34 THE LOAN. YOU CAN GET YOUR REFUND IN ABOUT 10 DAYS WITHOUT GETTING THIS
35 LOAN. YOU CAN HAVE YOUR TAX RETURN FILED ELECTRONICALLY AND YOUR REFUND
36 DIRECT DEPOSITED INTO YOUR OWN BANK ACCOUNT WITHOUT OBTAINING A LOAN OR
37 OTHER PAID PRODUCT. IF YOU DO NOT TAKE OUT THIS REFUND ANTICIPATION
38 LOAN, YOU ARE ELIGIBLE TO RECEIVE A GROSS TAX REFUND OF APPROXIMATELY
39 \$(INSERT AMOUNT). IF YOU DO TAKE OUT THIS REFUND ANTICIPATION LOAN, YOU
40 WILL RECEIVE APPROXIMATELY \$(INSERT AMOUNT)."

41 (F) FOR REFUND ANTICIPATION LOANS, DISCLOSURE OF THE REFUND ANTIC-
42 IPATION LOAN INTEREST RATE. THE REFUND ANTICIPATION LOAN INTEREST RATE
43 SHALL BE CALCULATED AS SET FORTH IN SUBSECTION (K) OF SECTION SEVEN
44 HUNDRED-A OF THIS PART.

45 (G) FOR REFUND ANTICIPATION CHECKS, THE FOLLOWING DISCLOSURES: (1) A
46 LEGEND, CENTERED, IN BOLD, CAPITAL LETTERS, AND IN EIGHTEEN-POINT TYPE
47 STATING: NOTICE; AND (2) THE FOLLOWING VERBATIM STATEMENT: "YOU ARE
48 PAYING (AMOUNT OF REFUND ANTICIPATION CHECK FEE) TO GET YOUR REFUND
49 CHECK THROUGH (NAME OF ISSUER OF REFUND ANTICIPATION CHECK). YOU CAN
50 AVOID THIS FEE AND STILL RECEIVE YOUR REFUND IN ABOUT 10 DAYS BY HAVING
51 THE IRS DIRECT DEPOSIT YOUR REFUND INTO YOUR OWN BANK ACCOUNT."

52 (H) FOR BOTH REFUND ANTICIPATION LOANS AND REFUND ANTICIPATION CHECKS,
53 THE FOLLOWING VERBATIM STATEMENT: "IF YOU CAN WAIT 10 DAYS FOR YOUR
54 REFUND BUT YOU DO NOT HAVE A BANK ACCOUNT, YOU CAN SIGN UP FOR A BASIC
55 BANKING ACCOUNT AT ANY NEW YORK STATE BANK FOR A MINIMAL FEE. YOU MAY
56 ALSO BE ELIGIBLE TO JOIN A CREDIT UNION."

1 (I) THIS FORM SHALL BE SIGNED AND DATED BY THE CONSUMER AND THE REGIS-
2 TRANT, AND EACH PARTY SHALL RETAIN A COPY.

3 S 700-F. REQUIREMENTS FOR REFUND ANTICIPATION LOANS AND REFUND ANTIC-
4 IPATION CHECKS. ANY PERSON (INCLUDING ANY OFFICER, AGENT, EMPLOYEE OR
5 REPRESENTATIVE) WHO MAKES OR FACILITATES A REFUND ANTICIPATION LOAN OR
6 REFUND ANTICIPATION CHECK SHALL:

7 (A) ARRANGE SUCH LOAN OR CHECK, OR INFORM THE CONSUMER THAT THE APPLI-
8 CATION IS REJECTED, PROMPTLY AFTER THE CONSUMER APPLIES FOR THE LOAN OR
9 CHECK.

10 (B) PROVIDE TO THE CONSUMER, PRIOR TO CONSUMMATION OF THE LOAN OR
11 CHECK TRANSACTION IN A FORM THAT CAN BE KEPT BY THE CONSUMER: (1) A COPY
12 OF THE COMPLETED LOAN OR CHECK APPLICATION AND AGREEMENT; (2) THE
13 SIGNED DISCLOSURES REQUIRED BY SECTION SEVEN HUNDRED-E OF THIS PART; AND
14 (3) FOR REFUND ANTICIPATION LOANS, THE DISCLOSURES REQUIRED BY THE
15 FEDERAL TRUTH-IN-LENDING ACT.

16 (C) PROVIDE THE DISCLOSURES REQUIRED BY SECTION SEVEN HUNDRED-E OF
17 THIS PART IN ENGLISH AND IN THE LANGUAGE IN WHICH THE LOAN WAS NEGOTI-
18 ATED.

19 S 700-G. PROHIBITED ACTIVITIES. NO PERSON, INCLUDING ANY OFFICER,
20 AGENT, EMPLOYEE OR REPRESENTATIVE OF SUCH PERSON, IN THE MAKING OR
21 FACILITATING OF A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK
22 SHALL:

23 (A) ENGAGE IN UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN THE FACILITAT-
24 ING OF A REFUND ANTICIPATION CHECK OR IN THE MAKING OR FACILITATING OF A
25 REFUND ANTICIPATION LOAN, INCLUDING MISREPRESENTING A FACTOR OR CONDI-
26 TION OF SUCH LOAN OR CHECK OR MAKING ANY ORAL STATEMENTS CONTRADICTING
27 ANY OF THE INFORMATION REQUIRED TO BE DISCLOSED UNDER THIS PART.

28 (B) FAIL TO COMPLY WITH ANY PROVISION OF THIS PART.

29 (C) THREATEN TO TAKE ANY ACTION THAT IS PROHIBITED BY THIS PART OR BY
30 ANY OTHER LAW, OR THAT THE PERSON DOES NOT ACTUALLY INTEND TO TAKE.

31 (D) MAKE OR FACILITATE A REFUND ANTICIPATION LOAN FOR WHICH THE REFUND
32 ANTICIPATION LOAN INTEREST RATE IS GREATER THAN TWENTY-FIVE PERCENT. THE
33 REFUND ANTICIPATION LOAN INTEREST RATE SHALL BE CALCULATED AS SET FORTH
34 IN SUBSECTION (K) OF SECTION SEVEN HUNDRED-A OF THIS PART. ANY REFUND
35 ANTICIPATION LOAN FOR WHICH THE REFUND ANTICIPATION LOAN INTEREST RATE
36 EXCEEDS TWENTY-FIVE PERCENT SHALL BE VOID AB INITIO, INSOFAR AS THIS
37 PROVISION DOES NOT OBSTRUCT, IMPAIR, OR CONDITION POWERS GRANTED UNDER
38 FEDERAL LAW.

39 (E) ADVERTISE OR PROMOTE REFUND ANTICIPATION LOANS WITHOUT PROMINENTLY
40 FEATURING THE WORD "LOAN." IF THE ADVERTISEMENT DOES NOT APPEAR IN
41 ENGLISH, THE DIRECT TRANSLATION OF THE WORD "LOAN" MUST BE PROMINENTLY
42 FEATURED IN SUCH ADVERTISEMENT. PROVIDED, FURTHER, NO PERSON SHALL:

43 (1) ADVERTISE OR PROMOTE REFUND ANTICIPATION LOANS WITHOUT DISTIN-
44 GUISHING SUCH A LOAN FROM A REFUND EXPEDITING SERVICE OFFERED BY THE
45 INTERNAL REVENUE SERVICE, SUCH AS DIRECT DEPOSIT OR ELECTRONIC FILING.
46 DIRECT DEPOSIT AND ELECTRONIC FILING SHALL NOT BE ADVERTISED IN SUCH A
47 WAY AS TO STATE OR SUGGEST THAT SUCH A SERVICE WILL DELIVER A REFUND TO
48 THE CONSUMER WITHOUT ANY WAITING TIME OR IN AS LITTLE AS TWO TO THREE
49 DAYS. SUCH ADVERTISING SHALL DISTINGUISH BETWEEN REFUND ANTICIPATION
50 LOAN PRODUCTS AND NON-LOAN PRODUCTS, WHETHER IT APPEARS IN ENGLISH OR IN
51 ANY OTHER LANGUAGE.

52 (2) MAKE ANY CLAIMS IN ADVERTISING THAT OVERSTATE THE TIME FRAME
53 DURING WHICH INTERNAL REVENUE SERVICE REFUNDS CAN BE EXPECTED TO BE
54 RECEIVED, ABSENT A REFUND ANTICIPATION LOAN. THE TIME FRAME CLAIMED IN
55 THE ADVERTISEMENT SHALL BE IN ACCORD WITH AVAILABLE INTERNAL REVENUE

1 SERVICE STATISTICS; SUCH STATISTICS ARE AVAILABLE AT WWW.IRS.GOV OR
2 THROUGH A LOCAL INTERNAL REVENUE SERVICE OFFICE IN NEW YORK STATE.

3 (F) DIRECTLY OR INDIRECTLY CHARGE, OR ARRANGE FOR THE CHARGING OF, ANY
4 INTEREST, FEE OR CHARGE RELATED TO A REFUND ANTICIPATION LOAN OR REFUND
5 ANTICIPATION CHECK, OTHER THAN THOSE SPECIFICALLY AUTHORIZED BY THIS
6 PART, INCLUDING BUT NOT LIMITED TO: (1) CHARGES FOR INSURANCE; (2)
7 ATTORNEYS FEES OR OTHER COLLECTION COSTS; OR (3) CHECK CASHING.

8 (G) INCLUDE ANY OF THE FOLLOWING PROVISIONS IN ANY DOCUMENT PROVIDED
9 OR SIGNED IN CONNECTION WITH A REFUND ANTICIPATION LOAN OR REFUND ANTIC-
10 IPATION CHECK, INCLUDING THE LOAN APPLICATION OR AGREEMENT:

11 (1) A HOLD HARMLESS CLAUSE;

12 (2) A CONFESSION OF JUDGEMENT CLAUSE;

13 (3) A WAIVER OF THE RIGHT TO A JURY TRIAL, IF APPLICABLE, IN ANY
14 ACTION BROUGHT BY OR AGAINST THE CONSUMER;

15 (4) ANY ASSIGNMENT OF OR ORDER FOR PAYMENT OF WAGES OR OTHER COMPEN-
16 SATION FOR SERVICES;

17 (5) A PROVISION IN WHICH THE CONSUMER AGREES NOT TO ASSERT ANY CLAIM
18 OR DEFENSE ARISING OUT OF THE CONTRACT, OR TO SEEK ANY REMEDIES PURSUANT
19 TO SECTION SEVEN HUNDRED-I OF THIS PART;

20 (6) A WAIVER OF ANY PROVISION OF THIS PART. ANY SUCH WAIVER SHALL BE
21 DEEMED NULL, VOID AND OF NO EFFECT;

22 (7) A WAIVER OF THE RIGHT TO INJUNCTIVE, DECLARATORY, OTHER EQUITABLE
23 RELIEF, OR RELIEF ON A CLASSWIDE BASIS; OR

24 (8) A PROVISION REQUIRING THAT ANY ASPECT OF A RESOLUTION OF A DISPUTE
25 BETWEEN THE PARTIES TO THE AGREEMENT BE KEPT CONFIDENTIAL. THIS PARA-
26 GRAPH SHALL NOT AFFECT THE RIGHT OF THE PARTIES TO AGREE THAT CERTAIN
27 SPECIFIED INFORMATION IS A TRADE SECRET OR OTHERWISE CONFIDENTIAL OR TO
28 LATER AGREE, AFTER THE DISPUTE ARISES, TO KEEP A RESOLUTION CONFIDEN-
29 TIAL.

30 (H) TAKE OR ARRANGE FOR A CREDITOR TO TAKE A SECURITY INTEREST IN ANY
31 PROPERTY OF THE CONSUMER OTHER THAN THE PROCEEDS OF THE CONSUMER'S TAX
32 REFUND TO SECURE PAYMENT OF A REFUND ANTICIPATION LOAN.

33 (I) DIRECTLY OR INDIRECTLY, INDIVIDUALLY OR IN CONJUNCTION OR COOPER-
34 ATION WITH ANOTHER PERSON, ENGAGE IN THE COLLECTION OF AN OUTSTANDING OR
35 DELINQUENT REFUND ANTICIPATION LOAN FOR ANY CREDITOR OR ASSIGNEE,
36 INCLUDING SOLICITING THE EXECUTION OF, PROCESSING, RECEIVING, OR ACCEPT-
37 ING AN APPLICATION OR AGREEMENT FOR A REFUND ANTICIPATION LOAN OR REFUND
38 ANTICIPATION CHECK THAT CONTAINS A PROVISION PERMITTING THE CREDITOR TO
39 REPAY, BY OFFSET OR OTHER MEANS, AN OUTSTANDING OR DELINQUENT REFUND
40 ANTICIPATION LOAN FOR THAT CREDITOR OR ANY CREDITOR FROM THE PROCEEDS OF
41 THE CONSUMER'S TAX REFUND.

42 (J) FACILITATE, REFER, OR SOLICIT CONSUMERS ON BEHALF OF A THIRD PARTY
43 ENGAGED IN CHECK CASHING FOR A FEE, OR PERMIT THIRD PARTY CHECK CASHING
44 FOR A FEE IN ANY PLACE OF BUSINESS IDENTIFIED ON THE APPLICATION FOR
45 REGISTRATION.

46 (K) FACILITATE ANY LOAN THAT IS SECURED BY OR THAT THE CREDITOR
47 ARRANGES TO BE REPAYED DIRECTLY FROM THE PROCEEDS OF THE CONSUMER'S NEW
48 YORK STATE TAX REFUND FROM THE NEW YORK STATE DIVISION OF THE TREASURY.

49 (L) OFFER A REFUND ANTICIPATION LOAN OR REFUND ANTICIPATION CHECK FOR
50 GREATER THAN FIFTY PERCENT OF THE APPLICANT'S TOTAL ANTICIPATED FEDERAL
51 TAX REFUND, OR PERMIT A CONSUMER TO ACCEPT A REFUND ANTICIPATION LOAN OR
52 REFUND ANTICIPATION CHECK FOR GREATER THAN FIFTY PERCENT OF THE CONSUM-
53 ER'S TOTAL ANTICIPATED FEDERAL TAX REFUND.

54 (M) MAKE OR FACILITATE A REFUND ANTICIPATION LOAN THAT COMPOUNDS
55 INTEREST OR CHARGES INTEREST ON INTEREST.

1 (N) CHARGE OR FACILITATE A LOAN THAT CHARGES LATE FEES FOR THE DELAYED
2 PAYMENT OF A REFUND.

3 (O) MAKE A MISREPRESENTATION OF FACT IN OBTAINING OR ATTEMPTING TO
4 OBTAIN A REGISTRATION AS A FACILITATOR.

5 (P) ENGAGE IN ANY OTHER ACTION PROHIBITED BY RULES PROMULGATED BY THE
6 BANKING DEPARTMENT.

7 S 700-H. FACILITATOR DUTY TO CONSUMER. (A) THE FACILITATOR IS A
8 BROKER OF REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION CHECKS AND
9 SHALL UPHOLD THE DUTIES OF BROKERS REQUIRED BY LAW.

10 (B) A FACILITATOR, INCLUDING ANY REGISTRANT AND ANY PERSON REQUIRED TO
11 BE REGISTERED AS A FACILITATOR UNDER THIS PART, SHALL HAVE A FIDUCIARY
12 DUTY TO THE CONSUMER, AND SHALL, IN ADDITION TO OTHER DUTIES IMPOSED BY
13 LAW:

14 (1) SAFEGUARD AND ACCOUNT FOR ANY MONEY HANDLED FOR THE CONSUMER OR
15 BORROWER;

16 (2) FOLLOW REASONABLE AND LAWFUL INSTRUCTIONS FROM THE CONSUMER OR
17 BORROWER;

18 (3) MAKE REASONABLE EFFORTS TO ENSURE THAT THE AMOUNT OF THE REFUND
19 ANTICIPATION LOAN OFFERED TO THE BORROWER IS REASONABLY ADVANTAGEOUS TO
20 THE CONSUMER, OR BORROWER CONSIDERING ALL THE CIRCUMSTANCES, INCLUDING
21 THE LIKELIHOOD THAT SUCH CONSUMER, OR BORROWER, WILL RECEIVE HIS OR HER
22 REFUND IN THE PROJECTED AMOUNT AND THE PROJECTED TIMEFRAME;

23 (4) DISCLOSE ANY AND ALL OFFSETS TO WHICH THE CONSUMER'S OR BORROWER'S
24 PROJECTED TAX REFUND WOULD BE EXPOSED PURSUANT TO ANY CROSS-LENDER
25 AGREEMENTS BETWEEN THE CONSUMER'S OR BORROWER'S CREDITOR AND OTHER LEND-
26 ERS. THE FACILITATOR SHALL DISCLOSE POTENTIAL OFFSETS PRIOR TO THE
27 DISTRIBUTION OF THE LOAN PROCEEDS, AT WHICH TIME THE CONSUMER OR BORROW-
28 ER, MAY DECLINE TO TAKE THE REFUND ANTICIPATION LOAN OR CHECK; AND

29 (5) ACT WITH REASONABLE SKILL, CARE AND DILIGENCE.

30 S 700-I. PRIVATE RIGHT OF ACTION. (A) THE REMEDIES PROVIDED IN THIS
31 SECTION ARE CUMULATIVE AND APPLY TO REGISTRANTS AND TO UNREGISTERED
32 PERSONS TO WHOM THIS PART APPLIES AND WHO FAIL TO REGISTER.

33 (B) ANY VIOLATION RELATING TO THE MAKING OF A REFUND ANTICIPATION LOAN
34 OR REFUND ANTICIPATION CHECK BY A FACILITATOR OF ANY PROVISION OF ARTI-
35 CLE TWENTY-TWO-A OF THE GENERAL BUSINESS LAW PROHIBITING UNFAIR OR
36 DECEPTIVE ACTS OR PRACTICES CONSTITUTES A VIOLATION OF THIS PART.

37 (C) ANY VIOLATION OF THIS PART CONSTITUTES A VIOLATION OF ARTICLE
38 TWENTY-TWO-A OF THE GENERAL BUSINESS LAW PROHIBITING UNFAIR OR DECEPTIVE
39 ACTS OR PRACTICES.

40 (D) A FACILITATOR WHO FAILS TO COMPLY WITH ANY PROVISION OF THIS PART
41 IS LIABLE TO THE CONSUMER FOR: (1) ACTUAL AND CONSEQUENTIAL DAMAGES; (2)
42 STATUTORY DAMAGES OF TWO THOUSAND DOLLARS (TO BE INCREASED ANNUALLY
43 BASED PROPORTIONALLY ON CHANGES IN THE CONSUMER PRICE INDEX, WITH FRAC-
44 TIONAL AMOUNTS ROUNDED TO THE NEAREST DOLLAR) OR THREE TIMES THE AMOUNT
45 OF THE REFUND ANTICIPATION LOAN FEE OR OTHER UNAUTHORIZED CHARGE, WHICH-
46 EVER IS GREATER; AND (3) REASONABLE ATTORNEY'S FEES AND COSTS.

47 (E) ANY PERSON MAY SUE FOR INJUNCTIVE OR OTHER APPROPRIATE EQUITABLE
48 RELIEF TO ENFORCE THIS PART.

49 (F) ANY CONSUMER MAY BRING A CLASS ACTION SUIT TO ENFORCE THIS PART.
50 IN ANY SUCH CLASS ACTION, A FACILITATOR WHO FAILS TO COMPLY WITH ANY
51 PROVISION OF THIS PART IS LIABLE FOR: (1) ACTUAL AND CONSEQUENTIAL
52 DAMAGES FOR EACH CLASS MEMBER; (2) STATUTORY DAMAGES AS SET FORTH IN
53 PARAGRAPH TWO OF SUBSECTION (D) OF THIS SECTION FOR EACH CLASS MEMBER;
54 AND (3) REASONABLE ATTORNEY'S FEES AND COSTS.

55 (G) THE REMEDIES PROVIDED IN THIS SECTION ARE NOT INTENDED TO BE THE
56 EXCLUSIVE REMEDIES AVAILABLE TO A CONSUMER NOR MUST THE CONSUMER EXHAUST

1 ANY ADMINISTRATIVE REMEDIES PROVIDED UNDER THIS PART OR ANY OTHER APPLI-
2 CABLE LAW.

3 S 700-J. RULES. THE BANKING DEPARTMENT MAY ADOPT RULES AS NECESSARY TO
4 EFFECTUATE THE PURPOSE OF THIS PART, TO PROVIDE FOR THE PROTECTION OF
5 THE BORROWING PUBLIC, AND TO ASSIST FACILITATORS IN INTERPRETING THIS
6 PART. THE BANKING DEPARTMENT MAY MODIFY THE DISCLOSURES IN SUBSECTION
7 (C) OF SECTION SEVEN HUNDRED-D AND SUBSECTION (D) OF SECTION SEVEN
8 HUNDRED-E OF THIS PART TO THE EXTENT THAT A REVISION OF THE TEN DAY
9 ESTIMATE FOR RECEIVING A REFUND FROM THE INTERNAL REVENUE SERVICE (WITH
10 ELECTRONIC FILING AND DIRECT DEPOSIT) IS APPROPRIATE.

11 S 700-K. RECORD KEEPING; ANNUAL REPORTS. (A) THE FACILITATOR SHALL
12 KEEP RECORDS OF ALL REFUND ANTICIPATION LOANS THAT IT ISSUES. THESE
13 RECORDS SHALL INCLUDE THE DISCLOSURE FORMS SIGNED BY CONSUMERS. THESE
14 RECORDS SHALL BE OPEN TO THE INSPECTION OF THE BANKING SUPERINTENDENT,
15 MUNICIPAL DEPARTMENTS OF CONSUMER AFFAIRS, OR ANY PERSON DULY AUTHORIZED
16 IN WRITING FOR SUCH PURPOSES BY THE BANKING SUPERINTENDENT WHO SHALL
17 EXHIBIT SUCH WRITTEN AUTHORITY TO THE FACILITATOR.

18 (B) ON OR BEFORE JULY FIRST OF EACH YEAR, BEGINNING JULY FIRST, TWO
19 THOUSAND TEN, EACH FACILITATOR SHALL FILE AN ANNUAL REPORT WITH THE
20 BANKING SUPERINTENDENT PURSUANT TO PROCEDURES THAT THE BANKING SUPER-
21 INTENDENT SHALL ESTABLISH. AN ANNUAL CONSOLIDATED REPORT SHALL BE
22 PREPARED BY THE BANKING SUPERINTENDENT AND MADE AVAILABLE TO THE PUBLIC.
23 THESE REPORTS SHALL INCLUDE THE FOLLOWING INFORMATION FOR THE TIME PERI-
24 OD OF APRIL FIFTEENTH OF THE PRIOR YEAR TO APRIL FIFTEENTH OF THAT YEAR:

25 (1) THE TOTAL NUMBER AND DOLLAR AMOUNT OF REFUND ANTICIPATION LOANS
26 FACILITATED BY THE FACILITATOR.

27 (2) THE TOTAL NUMBER AND DOLLAR AMOUNT OF REFUND ANTICIPATION CHECKS
28 FACILITATED BY THE FACILITATOR.

29 (3) THE AVERAGE NUMBER OF DAYS FOR WHICH REFUND ANTICIPATION LOANS
30 FACILITATED BY THE FACILITATOR WERE OUTSTANDING BEFORE BEING REPAYED.

31 (4) THE NAME AND ADDRESS OF ANY CREDITOR OR PERSON FOR WHOM THE FACI-
32 LITATOR FACILITATES REFUND ANTICIPATION LOANS OR REFUND ANTICIPATION
33 CHECKS.

34 (5) ANY OTHER INFORMATION REQUIRED BY THE BANKING SUPERINTENDENT.

35 S 700-L. SEVERABILITY. IF ANY PORTION OF THIS PART IS DETERMINED TO BE
36 INVALID FOR ANY REASON BY A FINAL NONAPPEALABLE ORDER OF ANY COURT OF
37 NEW YORK STATE OR OF A FEDERAL COURT OF COMPETENT JURISDICTION, THEN IT
38 SHALL BE SEVERED FROM THIS PART. ALL OTHER PROVISIONS OF THIS PART SHALL
39 REMAIN IN FULL FORCE AND EFFECT.

40 S 2. This act shall take effect January 1, 2010 and shall apply to
41 refund anticipation loans or refund anticipation checks issued on or
42 after such date; provided however that effective immediately, the addi-
43 tion, amendment and/or repeal of any rule or regulation necessary for
44 the implementation of this act on its effective date are authorized and
45 directed to be made and completed on or before such effective date.