

**STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION**

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|---------------------------|---|-------------------|
| IN THE MATTER OF: |) | DOCKET NO. 465741 |
| ANC DEVELOPMENT, LLC DBA |) | |
| INSTANT TAX SERVICE |) | |
| |) | |
| AND |) | |
| |) | |
| JEFF SAXTON, PRESIDENT OF |) | |
| ANC DEVELOPMENT, LLC |) | |

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance (“Assurance”) is entered into this 3 day of January, 2014 between ANC Development, LLC doing business as an Instant Tax Service franchise (“ANC”), and Jeff Saxton (“Saxton”), president of ANC, (collectively “Respondents”) and the Attorney General of the State of Ohio (“Attorney General”). For purposes of this Assurance, “Respondents” means ANC Development, LLC and Jeff Saxton, doing business under the name Instant Tax Service, or under any other business name, their agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, and all persons acting in concert or participation with Respondents, directly or indirectly, through any corporate device, partnership or association within the State of Ohio.

WHEREAS, the Attorney General, having reasonable cause to believe that Respondents have engaged in acts and practices which violate the Consumer Sales Practices Act, R.C. 1345.01 et seq., and the Substantive Rules, Ohio Administrative Code 109:4-3 et seq., has conducted an investigation pursuant to the authority granted him by R.C. 1345.06; and

WHEREAS, ANC and Saxton understand and agree that this Assurance of Voluntary Compliance includes a compromise of potential violations and should not be construed as an

admission of liability on the part of ANC or Saxton for any violation of the CSPA, R.C. 1345.01 et seq., and the substantive rules, Ohio Administrative Code 109:4-3- et seq.

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F), enter into and accept an Assurance of Voluntary Compliance; and

WHEREAS, this Assurance of Voluntary Compliance is an assurance in writing by Respondents of their intent to comply with the provisions of the Consumers Sales Practices Act and the Substantive Rules; and

WHEREAS, Respondents desire to comply with all aspects of the Consumer Sales Practices Act, Respondents hereby voluntarily enter into this Assurance with the Attorney General.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto **AGREE** as follows:

1. The "Effective Date" shall mean the date indicated on the first page of this Assurance.
2. By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of Respondents' business practices and actions occurring on or before the Effective Date of this Assurance.
3. By giving this written Assurance, Respondents agree to comply with all the terms of this Assurance and to conduct their business in compliance with all applicable Ohio laws, including without limitation, the Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq. and the Substantive Rules, Ohio Administrative Code, 109:4-3 et seq.

BACKGROUND AND STATEMENT OF FACTS

4. ANC Development, LLC is an Ohio for-profit corporation doing business in the State of Ohio, including Lorain County, with its address listed as 2820 N. Hayes St., Avon Ohio 44011.
5. ANC Development, LLC is a franchisee of ITS Financial, LLC dba Instant Tax Service (“ITS Corporate”) and operates several Instant Tax Service franchise locations, with the principal location at 1221 Cooper Foster Park Road, Lorain, Ohio 44053.
6. Jeff Saxton is a 50% owner and president of ANC Development, LLC.
7. Respondents have operated as an ITS Corporate franchise since late 2007 at the 1221 Cooper Foster Park Road, Lorain, Ohio 44053 location.
8. Respondents have operated as an ITS Corporate franchise since December 2011 at the 3228 West 65th, Cleveland, Ohio 44102 location.
9. Respondents have operated as an ITS Corporate franchise since December 2012 at the 7820 Cedar Road, Cleveland, Ohio 44106 location.
10. ANC Development, LLC dba Instant Tax Service is a “supplier,” as defined in R.C. 1345.01(C), as ANC is, and has been, engaged in the business of effecting consumer transactions by soliciting, offering, and selling tax preparation services, refund anticipation checks and refund anticipation loans to individuals in Lorain County and other counties in the State of Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
11. Jeff Saxton is a “supplier” as defined in R.C. 1345.01(C), as Saxton is, and has been, engaged in the business of effecting consumer transactions by soliciting, offering, and selling tax preparation services, refund anticipation checks and refund anticipation loans

to individuals in Lorain County and other counties in the State of Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

12. Respondents through the advertising efforts of ITS Corporate advertise their tax preparation services via signage, radio and television ads, internet, direct solicitations, and word of mouth advertising.
13. Respondents through the advertising efforts of ITS Corporate advertise that consumers may be eligible for instant cash advance and/or refund anticipation advance products of between \$50 and \$1000.
14. In some instances, consumers allege that the criteria to qualify for the instant cash advance and refund anticipation advance products are not disclosed to consumers.
15. The majority of consumers only qualify for \$50 to \$100 instant cash advance and refund anticipation advance products.
16. Very few consumers received a \$1000 instant cash advance or refund anticipation advance in 2009, 2010, or 2011.
17. Respondents charge consumers fees up to \$39 for their instant cash advance and refund anticipation advance products.
18. Respondents charge consumers fees up to and in excess of \$400 for their tax preparation services, depending on the type and complexity of the return(s).
19. In addition to the tax preparation fees and cash advance and refund anticipation advance product fees, Respondents charge consumers additional fees, such as the franchise fee, software fee, or service bureau fees, up to and in excess of \$100.

20. In some instances, consumers allege that these fees are not disclosed prior to the fees being subtracted from the consumers' refund check.
21. In some instances, consumers allege that Respondents made false and misleading statements to consumers which contradicted written representations.
22. In some instances, consumers allege that Respondents filed their tax returns without consumers providing a copy of their W-2 form.
23. In some instances, consumers allege that Respondents have filed their tax returns without the consumers' authorization.
24. Respondents assert that, in all such incidents where consumers complaints or allegations have been brought to ANC's attention, the consumers concerns were addressed and, where appropriate, refunds issued.
25. All consumer complaints made to the Attorney General against ANC and brought to ANC's attention have been resolved.

COMPLIANCE PROVISIONS

In connection with the soliciting, offering, and selling of tax preparation and advanced tax refund services:

26. Respondents shall comply with the CSPA, R.C. 1345.01 et seq., and the Substantive Rules enacted thereunder;
27. Respondents shall refrain from committing an unfair or deceptive act or practice in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.02(A);
28. Respondents shall refrain from advertising tax preparation and advanced tax refund services and failing to clearly and conspicuously disclose, in close proximity to the words stating the offer, all material exclusions, reservations, limitations, modifications, or

conditions of such offers, in violation of the CSPA, R.C. 1345.02(A), and the Exclusions and Limitations in Advertisements Rule, Ohio Admin. Code 109:4-3-02(A);

29. Respondents shall refrain from misleading customers as to whether Respondents (either directly or through a third-party) offer a loan or refund advance product, if in fact they do not, in violation of the CSPA, R.C. 1345.02(B)(4);
30. Respondents shall refrain from misrepresenting the terms, loan amounts, eligibility and fees or costs associated with any refund loan to any customer, in violation of the CSPA, R.C. 1345.02(B)(1);
31. Respondents shall refrain from using paystubs to prepare and file any tax return in lieu of a genuine Form W-2 issued by the customer's employer or payroll processing service, in violation of the CSPA, R.C. 1345.02(A);
32. Respondents shall post at every employee's station a laminated sheet identifying all costs and fees associated with their services. Respondents shall make this list of potential costs and fees available to a consumer prior to entering any personal information of the consumer into Respondents' system. The fees posted shall be consistent with the fees contained in the Fee Disclosure Form provided to and signed by consumers.
33. Respondents shall, prior to filing a consumer's tax return, disclose to the consumer both orally and in writing, all fees to be charged. The Fee Disclosure Form shall clearly and conspicuously itemize all fees to be charged and shall clearly and conspicuously state the total fee amount.
34. Respondents shall have each customer sign and date a Fee Disclosure Form at or before the time the tax return is filed. Respondents shall not charge any fees other

than those set forth on the Fee Disclosure Form. The Fee Disclosure Form must be kept in Respondents' files.

35. Respondents shall refrain from charging fees for: (a) services that are not performed or for items that do not exist; and (b) that, in total, exceed the sum disclosed to the customer and agreed to by the customer prior to the filing of each tax return.
36. Respondents shall refrain from filing tax returns without prior customer authorization, in violation of the CSPA, R.C. 1345.02(A). Respondents shall have each customer sign and date an authorization for each tax return filed. The authorization must be kept in the Respondents' file.
37. Respondents shall refrain from committing unconscionable acts or practices in connection with a consumer transaction, in violation of the CSPA, R.C. 1345.03(A);
38. Respondents shall refrain from offering any loan, advance product, or similar goods or services to their customers (either directly or through a third-party) that violates any lending, tax, or consumer protection laws.
39. Respondents shall refrain from offering any refund, loan, or advance product that their franchisor is not able to offer.
40. Respondents shall refrain from offering any refund loan or advance product that is a Non-RAL product as defined herein unless it conforms to all State and Federal laws and regulations. Such Non-RAL products that are in compliance with all State and Federal laws and regulations maybe offered directly or through a third party so long as any such third party is also in compliance with all State and Federal rules and regulations.
 - (A) Respondents may offer Non-RAL products only through a genuine third party lender who is not affiliated with or owned, controlled, or operated by

Respondents. Respondents shall have no ownership interest in the third-party lender, no interest in the profits or fees of the third-party lender, no exclusivity agreement with the third-party lender, and shall have no authority over the lending, business, or management decisions of the third-party lender. Further, Respondents' transmission to a third-party lender of fees charged by or owed to the third-party lender will not constitute affiliation, ownership, control or operation by Respondents.

- (B) The Non-RAL application shall include a clear and conspicuous disclosure to customers notifying them of primary criteria that affect the Non-RAL decision. Respondents are enjoined from processing applications for loan or refund advance products from customers who will be automatically denied.
- (C) Respondents shall disclose to the consumer, both orally and in writing, via a fee statement, all fees to be charged in conjunction with the Non-RAL product. The fee statement for the Non-RALs shall clearly and conspicuously itemize all fees to be charged and the fees charged shall comply with Ohio laws. Prior to the submission of the Non-RAL application, the fee statement must be signed and dated by the consumer.

41. Respondents may offer Refund Anticipation Loan ("RAL") products (as defined in IRS Pub. 1345); however, the RAL product may only be offered using information from genuine W-2s and not paystubs, and must comply with all federal laws, including but not limited to the Equal Credit Opportunity Act ("ECOA"), and the Truth in Lending Act ("TILA"). Specifically, Respondent shall provide accurate TILA disclosures to all program applicants and written Notification of Adverse Action to all

applicants who are denied a RAL, whether or not TILA or ECOA is applicable to the program. The RAL program must also fully comply with all applicable state laws, including but not limited to all licensing, registration, disclosure, finance, lending, usury, and consumer protection laws.

- (B) Respondents may offer a refund loan or advance product only through a genuine third party lender who is not affiliated with or owned, controlled, or operated by Respondents. Respondents shall have no ownership interest in the third-party lender, no interest in the profits or fees of the third-party lender, no exclusivity agreement with the third-party lender, and shall have no authority over the lending, business, or management decisions of the third-party lender. Further, Respondents' transmission to a third-party lender of fees charged by or owed to the third-party lender will not constitute affiliation, ownership, control or operation by Respondents.
- (C) In order to ensure that the RAL product does not create an environment that allows or promotes unauthorized tax return filings, undisclosed fees, or paystub return filings, Respondents are required to have the customer's W-2 in hand at the time the RAL application is taken;
- (D) The RAL application shall include a clear and conspicuous disclosure to customers notifying them of primary criteria that affect the RAL decision. Respondents are enjoined from processing applications for loan or refund advance products from customers who will be automatically denied.
- (E) Respondents will insure that all customers who apply for a RAL and whose tax return Respondents prepare and file will sign and date a form that

clearly indicates that the customer is granting the Respondents permission to file their return.

(F) Respondents shall disclose to the consumer, both orally and in writing, via a fee statement, all RAL fees to be charged. The fee statement for the RALs shall clearly and conspicuously itemize all fees to be charged and the fees charged shall comply with Ohio and Federal laws. Prior to the submission of the RAL application, the fee statement must be signed and dated by the consumer.

42. Respondents shall, at the time of filing a consumer's tax return, provide to the consumer copies of all documents pertaining to the return, including but not limited to, the signed form 8879, signed Fee Disclosure Form, signed 1040 form, and any related schedules. Respondent shall also provide a consumer with any documents related to their application for a RAL or Non-RAL loan, or other goods or services, including signed fee statements.
43. Respondents shall maintain in their possession and control for a period of five (5) years all business records relating to Respondent's solicitation or effectuation of business in Ohio and to permit the Ohio Attorney General or his representative, upon reasonable, seventy-two (72) hour notice, to inspect and/or copy any and all of said records, however stored, and copies of such records be provided at Respondents' expense to the Ohio Attorney General upon request of the Ohio Attorney General or his representatives.

GENERAL PROVISIONS

44. This Assurance shall be governed by the laws of the State of Ohio.
45. This Assurance does not constitute an approval by the Attorney General of any of Respondents' business practices and Respondents shall not represent directly or

indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of Respondents' business practices.

46. This Assurance does not constitute any admission of any violation of the CSPA, R.C. 1345.01 et seq. and its substantive rules, Ohio Administrative Code 109:4-3 et seq.
47. This Assurance sets forth the entire agreement between the Attorney General and Respondents (the "Parties") and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.
48. The Parties acknowledge that no other promises, representations or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.
49. Respondents shall continue to negotiate in good faith, and resolve, through the office of the Attorney General, any consumer complaints filed with the Ohio Attorney General's Office, concerning Respondents' conduct occurring prior to or after the Effective Date of this Assurance, which are brought by consumers that are discovered after entering into this Assurance.
50. This Assurance is a public record and shall be maintained in the Public Inspection File.

PAYMENT TO THE STATE

51. As part of the consideration for the termination of the Attorney General's investigation of Respondents under the CSPA, Respondents shall pay, jointly and severally, Fifty Thousand Dollars (\$50,000.00) to the Office of the Ohio Attorney General's Consumer Protection Enforcement Fund for fees and investigative costs. Twenty-five Thousand Dollars (\$25,000.00) of said penalty is suspended upon compliance with this Assurance. If Respondents fail to comply with all provisions in this Assurance, including making timely payments as required by the payment plan set forth in this Paragraph, the remainder of the Fifty Thousand Dollars (\$50,000.00) shall be due and payable upon demand. Payment of Ten Thousand Dollars (\$10,000) shall be due upon execution of this Assurance. Respondents agree to pay a minimum of Eight Hundred and Thirty-Three Dollars (\$833.00) per month, beginning on the first monthly anniversary of the execution of this Assurance and on that same day of each month thereafter until the entire amount is paid in full. Respondents may, at their discretion, make payments in an amount greater than the monthly payment required by this Paragraph. All payments shall be made by delivering a certified check or money order, payable to the "Ohio Attorney General's Office," to:

**Teresa Goodridge
Compliance Officer
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215**

PENALTIES FOR FAILURE TO COMPLY

52. The Attorney General may assert any claim that Respondents have violated this Assurance in a separate civil action to enforce this Assurance, or to seek any other relief

afforded by law for each separate and appropriate violation the Attorney General asserts the Respondent has committed. In any such action or proceeding, relevant evidence of conduct that occurred before the Effective Date shall be admissible on any material issue, including alleged willfulness, intent, knowledge, contempt or breach, to the extent permitted by law. By this paragraph, Respondents do not waive any evidentiary objection or any other objection it may have as permitted by law to the admissibility of any such evidence.

53. Evidence of a violation of an Assurance of Voluntary Compliance is prima-facie evidence of an act or practice in violation of the CSPA, R.C. 1345.01 et seq., if presented after the violation in an action brought under the CSPA, R.C. 1345.01 et seq.
54. This Assurance shall in no way exempt Respondents from any other obligations imposed by law, and nothing contained herein shall relieve Respondents of any legal responsibility for any acts or practices engaged in by Respondents other than those acts specifically resolved by this Assurance.
55. Nothing in this Assurance shall in any way preclude any investigative or enforcement action against Respondents under any legal authority granted to the Attorney General:
 - (A) With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully obeyed; or
 - (B) With respect to transactions or occurrences which are not the subject of this action.

WHEREFORE, the Parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 3 day of January 2014.

SIGNATURES

Accepted:

**MICHAEL DEWINE
OHIO ATTORNEY GENERAL**

BY: 

TERESA A. HEFFERNAN (0080732)
Senior Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215
(614) 644-9636
(866) 521-9921 (facsimile)

Date 1/9/2014

Accepted:

ANC Development LLC and Jeff Saxton

BY: 

Jeff Saxton
Individually and as
Owner and Operator of ANC Development LLC

Date 1/3/14

COUNSEL FOR RESPONDENTS

BY: 

MARK M. TURNER (0075516)
Gallagher Sharp
Buckley Building, Sixth Floor
1501 Euclid Avenue
Cleveland, OH 44115
(216) 241-5301

Date 1/3/14