

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Labor, Licensing, and Regulation
(DLS Control No. 15-118)**

Overview and Legal and Fiscal Impact

These regulations amend existing examination requirements for registration as an individual tax preparer in the State. The regulations also repeal a certain waiver from examination requirements for individuals with an active federal registration with the Internal Revenue Service.

The regulations present no legal issues of concern.

Regulations of COMAR Affected

Department of Labor, Licensing, and Regulation:

State Board of Individual Tax Preparers: General Regulations: COMAR 09.38.01.01-.03

Legal Analysis

Background

Chapter 623 of 2008 created the State Board of Individual Tax Preparers (board) in the Department of Labor, Licensing, and Regulation to register and oversee qualified individuals who provide individual tax preparation services. Qualified applicants for board registration must pass an examination prepared by the Internal Revenue Service (IRS) or an equivalent examination; current regulations require the former. On February 3, 2014, a federal appeals court affirmed a district court ruling that the IRS exceeded its statutory authority when it required the credentialing and registration of tax return preparers. *Loving v. IRS*, 742 F.3d 1013 (D.C.Cir. 2014). The appeals court admitted that regulation may be wise policy but left it up to Congress and the President to enact targeted legislation. Because the federal court rulings effectively discontinued the administration of the IRS examination, the board proposed these regulations to implement the Maryland Registered Tax Preparer examination.

Summary of Regulation

Regulation .01 redefines the term “examination” to mean the Maryland Registered Tax Preparer examination given by the board. Regulations .02A through D are renumbered as .02D through G, with no substantive amendments. New regulation .02A establishes a passing score of 70% for the examination. Beginning January 1, 2016, regulation .02B requires an individual to pass the board’s examination in order to qualify for registration, unless the individual otherwise qualifies for a waiver. Regulation .02C gives a special exception to those individuals who passed the IRS examination anytime between November 1, 2011, and January 18, 2013 (the date

of the federal district court ruling). Finally, the regulations repeal Regulation .03 as, under these new examination requirements, that regulation is rendered obsolete.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The board cites §§ 21-101, 21-203, 21-205, 21-207, and 21-301 to 304 of the Business Occupations and Professions Article and Chapter 623 of 2008, § 6 as legal authority for these regulations. This authority is overinclusive. Although relevant to the general regulations of the board, only two of the cited sections specifically address the topics contained in these regulations. Section 21-205 expressly empowers the board to adopt regulations to carry out the title, the purpose of which is to ensure that qualified individuals provide tax preparation services. To that effect, § 21-205(b)(2) specifically requires the board to select and administer examinations. Section 21-304 requires the board to give an IRS-prepared examination or its equivalent to qualified applicants and to adopt regulations that establish the passing score for an examination.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The department has agreed to amend these regulations to correct technical errors.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have minimal or no impact on State or local governments. The regulations replace a federal examination requirement, which is no longer available, with a State equivalent. Examination fees are paid directly to the exam vendor and, therefore, have no effect on special fund revenues for the Individual Tax Preparers Fund. The Department of Legislative Services concurs.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs and notes that

exam fees for applicants for an Individual Tax Preparer registration decrease from \$116 for the federal exam to \$65 for the State exam.

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