

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 452
 Ways and Means

(The Speaker)(By Request - Office of the Comptroller)
 Education, Energy, and the Environment and
 Budget and Taxation

**Individual Tax Preparers - Code of Ethics, Notification of Actions, Enforcement,
 and Penalties (Stop Scam Tax Preparers Act)**

This departmental bill (1) requires the State Board of Individual Tax Preparers, by January 1, 2026, to publish on its website a code of ethics and rules of professional conduct for engaging in the practice of individual tax preparation; (2) requires the board to notify the Comptroller’s Office of specified actions and violations under the Maryland Individual Tax Preparers Act; (3) grants authorized employees of the Field Enforcement Bureau with the powers, duties, and responsibilities of a peace officer for the purpose of enforcing the laws pertaining to income tax preparation; and (4) requires the Comptroller to notify the board after prohibiting an income tax return preparer from submitting income tax returns electronically. Lastly, the bill prohibits an income tax preparer from willfully preparing, assisting in preparing, or causing the preparation of an income tax return or claim for refund without being properly licensed or registered to provide income tax preparation services in the State; a violation is a misdemeanor subject to a fine of up to \$5,000 to be paid into the Tax Clinics for Low-Income Marylanders Fund (TCLIM).

Fiscal Summary

State Effect: General fund expenditures increase by \$32,300 only in FY 2025 for programming costs. The bill’s requirements and any related enforcement activity can otherwise be handled with existing budgeted resources. Minimal increase in TCLIM revenues beginning in FY 2025 due to the bill’s monetary penalty provision.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	-	-	-	-	-
GF Expenditure	\$32,300	\$0	\$0	\$0	\$0
Net Effect	(-)/-	-	-	-	-

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: The Office of the Comptroller has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law/Bill Summary:

Maryland Individual Tax Preparers Act

Title 21 of the Business Occupations and Professions Article (“Maryland Individual Tax Preparers Act”) establishes a registration program designed for the purpose of ensuring that qualified individuals provide individual tax preparation services. The Act is subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act and is scheduled to sunset July 1, 2026.

The following individuals are exempt from the requirements of Title 21: (1) an individual in good standing with an active license issued by the State Board of Public Accountancy or a licensing authority in another state; (2) an individual in good standing and admitted to practice law in the State or in another state; (3) an individual employed by a local, state, or federal government agency, but only in the performance of official duties; (4) an individual enrolled to practice before the Internal Revenue Service, as specified; and (5) an individual serving as an employee of or an assistant to an individual tax preparer or exempt individual in the performance of official duties, unless the individual signs an individual tax return as the preparer.

State Board of Individual Tax Preparers: The board, which is housed within the Maryland Department of Labor (MDL), is charged with (1) adopting rules of professional conduct as appropriate to establish a high standard of integrity and dignity for the practice of individual tax preparation; (2) select and administer examinations; (3) establish fees; (4) maintain a list of all authorized individual tax preparers registered by the board; (5) maintain a record of its proceedings; (6) maintain records of all complaints regarding individual tax preparers in the State; and (7) report to the General Assembly.

Investigations: The board may investigate a complaint that alleges a violation of the Maryland Individual Tax Preparers Act. On receipt of the results of an investigation, the board must promptly take appropriate action to ensure compliance with the Act. If the board concludes that an alleged violation will result in harm to a resident of the State, the

board may seek a permanent or temporary injunction with respect to the conduct from the circuit court of the county in which the alleged violation occurs. In seeking an injunction, the board need not post bond, allege or prove that an adequate remedy at law does not exist, or allege or prove that substantial or irreparable damage would result from the continued violation.

Disciplinary Action: Subject to administrative hearing requirements, the board may deny a registration to any applicant, reprimand any registered individual, or suspend or revoke a registration if the applicant or registered individual (1) fraudulently or deceptively obtains or attempts to obtain a registration for the applicant or registered individual or for another; (2) fraudulently or deceptively uses a registration; (3) is convicted of a felony or misdemeanor, either of which is directly related to the fitness and qualification of the applicant or registered individual to provide individual tax preparation services; (4) is guilty of negligence, incompetence, or misconduct while providing individual tax preparation services; or (5) violates any provision of the Maryland Tax Preparers Act or regulation adopted under the Act.

In addition to reprimanding a registered individual or suspending or revoking a registration, the board may impose a civil penalty of up to \$5,000 per violation, payable to the general fund. To determine the amount of the penalty, the board must consider the seriousness of and harm caused by the violation, the good faith of the registered individual, and any history of previous violations by the registered individual. The board must use any such penalties collected in accordance with this authorization for enforcement purposes.

A violator who has previously been assessed a penalty for a violation is guilty of a misdemeanor subject to a fine of up to \$500, up to six months imprisonment, or both.

Under the bill, if the board seeks an injunction or takes a disciplinary action against an individual for a violation of the Act, the board must notify the Comptroller within five business days after taking the action.

Prohibited Acts: Except as otherwise specified, an individual may not provide, attempt to provide, or offer to provide individual tax preparation services in the State unless registered by the board, nor may a person employ an individual to provide, attempt to provide, or offer to provide individual tax preparation services in the State unless the individual is registered by the board (§ 21-401 of the Business Occupations and Professions Article). Title 21 further specifies additional requirements and prohibitions relating to false representations, disclosures, and maintenance of records.

Under the bill, the board must notify the Field Enforcement Bureau of the Comptroller's Office of a violation of § 21-401 (practicing without a registration) within five business days after determining that a violation has occurred.

Application of Maryland Consumer Protection Act: A violation of the Maryland Individual Tax Preparers Act is an unfair or deceptive trade practice under the Maryland Consumer Protection Act and is subject to the enforcement and penalty provisions contained therein. In addition to the aforementioned remedies, an individual who is aggrieved by a violation may bring an action against the violator to recover \$500 per violation and actual damages sustained as a result of the violation.

Income Tax Return Preparer Requirements under Tax-General § 10-824

Subject to specified exceptions, an income tax return preparer must file all qualified returns that the income tax return preparer prepares by electronic means as prescribed by the Comptroller if the income tax return preparer has prepared more than 100 qualified tax returns in the prior tax year. For purposes of this requirement, “income tax return preparer” means a person who for compensation prepares a substantial portion or more of a qualified return or employs one or more persons to prepare for compensation a substantial portion or more of a qualified return; “qualified return” means any original return of individual income tax imposed under the State income tax.

Under the bill, if the Comptroller prohibits an income tax return preparer from submitting income tax returns electronically, the Comptroller must notify the State Board of Individual Tax Preparers within five business days after taking the action.

Prohibitions and Penalties under Tax-General § 13-1004

Section 13-1004 of the Tax-General Article specifies misdemeanor offenses and penalties applicable to income tax return preparers. Specifically, an income tax preparer who willfully prepares, assists in preparing, or causes the preparation of a false income tax return or claim for refund with fraudulent intent or the intent to evade income tax is guilty of a misdemeanor and, on conviction, subject to a fine of up to \$10,000, up to five years imprisonment, or both. Similarly, an income tax return preparer who willfully attempts to evade any tax imposed under the Tax-General Article or the payment thereof is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$10,000, up to five years imprisonment, or both.

Under the bill, an additional offense and related penalties are added to § 13-1004. Specifically, an income tax return preparer may not willfully prepare, assist in preparing, or cause the preparation of an income tax return or claim for refund without being properly licensed or registered to provide income tax preparation services in the State. A violation is a misdemeanor subject to a fine of up to \$5,000 per violation, to be paid into TCLIM. Each income tax return or claim for refund that an income tax preparer prepares, assists in preparing, or causes the preparation of in violation of this provision is a separate violation.

Tax Clinics for Low-Income Marylanders Fund

Chapters 678 and 679 of 2021 established TCLIM, a special, nonlapsing fund administered by the Comptroller, to provide grants to the University of Maryland School of Law, the University of Baltimore School of Law, and the Maryland Volunteer Lawyers Service to operate tax clinics for low-income Maryland residents. Each fiscal year, the total amount of grant money expended from TCLIM to support tax clinics must be distributed evenly among the three entities.

Background: The Comptroller's Office advises that the bill aims to curb tax return preparer fraud by improving coordination between the Comptroller's Office and the State Board of Individual Tax Preparers, expanding the enforcement powers of the Field Enforcement Bureau, and authorizing the Comptroller's Office to pursue financial penalties against individuals engaging in unauthorized tax preparation services.

State Expenditures: The Judiciary advises that the new misdemeanor offense and related penalty established under the bill necessitate one-time programming changes totaling an estimated \$32,300. Thus, general fund expenditures for the Judiciary increase by \$32,300 in fiscal 2025 only. The Judiciary can otherwise handle any additional caseload with existing budgeted resources.

The Comptroller's Office and MDL can handle the bill's requirements and any related enforcement activity with existing budgeted resources.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 675 (The President)(By Request - Office of the Comptroller) - Education, Energy, and the Environment and Budget and Taxation.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2024
rh/mcr Third Reader - March 19, 2024
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Individual Tax Preparers - Code of Ethics, Notification of Actions, Enforcement, and Penalties (Stop Scam Tax Preparers Act)

BILL NUMBER: HB0452

PREPARED BY: Justin Hayes, Director of State Affairs

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

This bill mandates information sharing between the Office of the Comptroller and the Maryland Board of Individual Tax Preparers (MBITP) within the Department of Labor (DOL) when either body takes disciplinary action against an individual, directs the MBITP to develop and publish a code of ethics and rules of professional conduct for individual tax preparers registering in Maryland, and authorizes the Comptroller's Field Enforcement Bureau to pursue financial penalties against individuals engaging in scam and unregistered tax preparation services. There is no direct economic impact on lawfully operating small businesses from this bill. To the extent that small businesses may be victimized by unregistered tax preparers, there may be a net positive effect – as there will be a disincentive (in the form of financial and criminal penalties) to engage in fraudulent tax preparation activities.