

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 817

(Senator Conway, *et al.*)

Education, Health, and Environmental Affairs

Economic Matters

Maryland Individual Tax Preparers Act

The bill establishes a State Board of Individual Tax Preparers to register qualified individuals to provide individual tax preparation services.

The bill takes effect June 1, 2008.

Fiscal Summary

State Effect: Special fund expenditures could increase by \$360,200 in FY 2009 to hire board staff, develop registration materials, and make programming changes. Additional special fund expenditures could result from a public awareness campaign. Special fund revenues could increase by \$125,000 in FY 2009 to reflect registration activity. Potential additional minimal general fund expenditures and revenues could result from the bill's penalty provisions. Future years reflect annualization, inflation, and biennial registration cycles.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
GF Revenue	-	-	-	-	-
SF Revenue	125,000	625,000	131,300	656,300	137,800
GF Expenditure	-	-	-	-	-
SF Expenditure	360,200	347,300	367,700	388,800	410,800
Net Effect	(\$235,200)	\$277,700	(\$236,400)	\$267,500	(\$273,000)

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

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: Potential meaningful for providers of individual tax preparation services.

Analysis

Bill Summary: The bill establishes an eight-member State Board of Individual Tax Preparers appointed by the Governor with the advice of the Secretary of Labor, Licensing, and Regulation; the Comptroller; and the Attorney General. Members serve four-year staggered terms and are entitled to compensation as well as travel reimbursement. The bill establishes an Individual Tax Preparers Fund to approximate the costs associated with administration and enforcement of the Maryland Individual Tax Preparers Act; however, the Governor is required to include a general fund appropriation for the board if special fund revenues are insufficient to cover the board's costs.

An individual is required to be registered by the board before providing individual tax preparation services in the State. To qualify, an individual must be at least age 18, a high school graduate, and pass an examination equivalent to the Special Enrollment Examination prepared by the Internal Revenue Service. On receipt of a registration fee, the board is authorized to issue a registration to the applicant. Registration is valid for a period of two years, with continuing education requirements established for renewal. The board may approve a provider of continuing education services upon receipt of an application and fee.

A registered individual tax preparer must disclose certain information to a customer prior to rendering services, including the preparer's credentials and contact information. The preparer must sign a return that he or she prepares, obtain the customer's signature on a completed return, and maintain confidentiality.

A person is prohibited from using the titles "registered individual tax preparer" or "individual tax preparer" or otherwise presenting himself as a preparer of tax services if not registered with the board. Persons licensed by the State Board of Public Accountancy or a licensing authority in another state, persons admitted to practice law in Maryland or another state, persons employed by government in performance of official duties, persons enrolled to practice before the Internal Revenue Service under Circular 230, and persons serving as an assistant to an individual tax preparer or exempted professional are exempted from registration requirements.

The board is authorized to deny registration, reprimand a registered individual, or suspend or revoke a registration for fraudulently obtaining or using a registration, engaging in criminal activity, or engaging in professional misconduct. In addition to taking disciplinary action, the board may impose a penalty of up to \$5,000 for each

violation of the Maryland Individual Tax Preparers Act, with penalties used for enforcement purposes. An individual must be given an opportunity for hearing before the board before any final action is taken. A person aggrieved by an individual tax preparer may bring an action for damages and civil penalties. Violation of the bill's provision is also an unfair or deceptive trade practice under the Maryland Consumer Protection Act, subject to MCPA's civil and criminal penalties.

An individual who provides tax preparation services has until June 1, 2010 to meet registration requirements. The board must waive examination requirements for an individual who has at least 15 consecutive years of individual tax preparation experience, has completed at least 8 hours of annual continuing education, and is in good standing with federal and State regulatory agencies.

The board, in conjunction with relevant trade associations, is required to publicize registration requirements through a public awareness campaign. The board is subject to evaluation and reestablishment provisions of the Maryland Program Evaluation Act and terminates on July 1, 2016.

Current Law: The State Board of Public Accountancy regulates and licenses individuals who provide accountancy services, including auditing financial statements or providing a written certificate or opinion on the correctness of the information in a financial statement, report, schedule, or exhibit. Tax preparers who do not provide these services are not required to be credentialed or registered by the State.

To qualify for a license from the State Board of Public Accountancy, an applicant must have completed a baccalaureate or higher degree with a major in accounting or an equivalent field. An applicant for an initial license must also complete at least 2,000 hours of practical work experience under the direction of a qualified professional and pass an examination of the American Institute of Certified Public Accountants. The board may issue a license once an applicant meets all applicable education, experience, and examination criteria and all fees are paid.

The IRS also maintains an enrolled agent program for individuals who represent taxpayers, including certified public accountants and attorneys. Individuals must meet the requirements of Treasury Department Circular 230, which requires an individual to qualify by written examination or IRS experience. Enrolled agents must also pass a background check. The IRS offers an optional registration of tax preparers as a condition of participating in its electronic filing program.

The Consumer Protection Division within the Office of the Attorney General is responsible for pursuing unfair and deceptive trade practice claims under the Maryland Consumer Protection Act. Upon receiving a complaint, the division must determine

whether there are “reasonable grounds” to believe that a violation of MCPA has occurred. Generally, if the division does find reasonable grounds that a violation has occurred, the division must seek to conciliate the complaint. The division may also issue cease and desist orders, or seek action in court, including an injunction or civil damages, to enforce the Act. Violators of MCPA are subject to • civil penalties of \$1,000 for the first violation and \$5,000 for subsequent violations; and • criminal sanction as a misdemeanor, with a fine of up to \$1,000 and/or imprisonment for up to one year.

State Revenues: The Department of Labor, Licensing, and Regulation has identified two other states that regulate individual tax preparers. Based on activity in California and Oregon, the department estimates that 6,000 tax preparers could register as a result of this bill. Beginning in fiscal 2009, the department anticipates that at least 1,000 tax preparers would register under the bill’s grandfathering provisions; the remainder of registrants are assumed to qualify by grandfathering or examination in fiscal 2010.

The bill establishes an Individual Tax Preparers Fund to approximate the board’s administration and enforcement costs. In the board’s first biennial registration cycle, expenditures are estimated at \$707,505. Given this estimate, application, examination, and registration fees would have to total approximately \$125 to approximate expenditures.

In accordance with these assumptions, special fund revenues would increase by \$125,000 in fiscal 2009 and \$625,000 in fiscal 2010, with growth estimated at 5% per biennial cycle.

State Expenditures: Special fund expenditures could increase by an estimated \$360,218 in fiscal 2009, which accounts for a 90-day start-up delay from the bill’s June 1, 2008 effective date. This estimate reflects the cost of hiring one program manager, one administrative aide, one office clerk, one investigator, and a half-time assistant Attorney General to provide the staff necessary to regulate and register individual tax preparers. It includes salaries, fringe benefits, one-time start-up costs, computer programming costs, and ongoing expenditures. Operating costs include board member compensation, examination development and administration, administrative hearing expenditures, and other direct and indirect costs. Expenditures resulting from the required public awareness campaign cannot be reliably estimated at this time.

Positions	4.5
Salaries and Fringe Benefits	\$217,719
Electronic Registration and Database Programming	60,000
Other Operating Expenses	<u>82,499</u>
Total FY 2009 State Expenditures	\$360,218

Future year expenditures reflect • full salaries with 4.4% annual increases and 3% employee turnover; and • 2% annual increases in ongoing operating expenses.

If the Attorney General's Office receives fewer than 50 complaints per year stemming from the bill, the additional workload could be handled with existing resources.

Small Business Effect: Providers of individual tax preparation services could experience additional expenditures related to the bill's registration requirements. To the extent that these requirements reduce the number of unqualified providers, registered providers could benefit.

Additional Information

Prior Introductions: Similar bills were introduced in the 2007 session as SB 513 and HB 998. Both bills were withdrawn.

Cross File: HB 1447 (Delegate Krysiak, *et al.*) – Economic Matters.

Information Source(s): Comptroller's Office; Office of Administrative Hearings; Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2008
 mll/ljm Revised - Senate Third Reader - March 22, 2008

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