

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 871
Economic Matters

(Delegate S. Howard, *et al.*)

State Board of Individual Tax Preparers - Expiration and Surrender of Registrations and Civil and Criminal Penalties

This bill authorizes the State Board of Individual Tax Preparers to impose a civil penalty of up to \$5,000 on *a person* who violates any provision of the Maryland Individual Tax Preparers Act. The board must consider the seriousness of the violation and the harm caused by the violation, among other conditions, in determining the amount of the penalty. Fine revenues collected from this provision must be paid to the general fund. The bill also specifies the method by which the board retains jurisdiction over a registrant during the course of disciplinary proceedings. The bill also establishes that *any person* who violates the Maryland Individual Tax Preparers Act is guilty of a misdemeanor and subject to a maximum penalty of a \$500 fine and/or six months imprisonment.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions. Minimal increase in special fund revenues from increased compliance with the requirement that individual tax preparers register with the board. Special fund expenditures increase correspondingly to handle the additional registrants.

Local Effect: Potential minimal increase in expenditures due to the bill's penalty provisions. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary: For the limited purpose of retaining the jurisdiction of the board over a registered individual tax preparer during the course of disciplinary proceedings, unless the board agrees to accept the surrender of the individual's registration, the registration must remain in effect and does not expire by operation of law while the individual is under investigation by the board or awaiting a hearing or disposition on charges related to the disciplinary actions.

Current Law: The State Board of Individual Tax Preparers may impose a civil penalty on an applicant or registered individual in addition to otherwise reprimanding or suspending the individual for violating the Maryland Individual Tax Preparers Act. Civil penalties are paid to the Individual Tax Preparers Fund, not the general fund. However, the board does not have the authority to impose a civil penalty on an unregistered individual who performs – or represents himself or herself as performing – individual tax preparation services in the State without being registered with the board.

The board is authorized to deny registration, reprimand a *registered* individual, or suspend or revoke a registration if the individual (1) fraudulently obtains or uses a registration; (2) is convicted of a felony or misdemeanor that is directly related to the fitness and qualification of the individual to provide tax preparation services; (3) is guilty of professional negligence, incompetence, or misconduct; or (4) violates the Maryland Individual Tax Preparers Act or associated regulations. In addition to taking disciplinary action, the board may impose a penalty on one of these individuals of up to \$5,000 for each violation of the Act, with penalties to be used for enforcement purposes. An individual must be given an opportunity for a hearing before the board prior to any final action being taken.

Violation of the Act is also an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

An unfair or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

Background: Chapter 623 of 2008 established the State Board of Individual Tax Preparers. Individuals are required to register with the board before providing individual tax preparation services in the State. Registration is valid for two years; a continuing education requirement must be fulfilled for renewal. To qualify, an individual must be a high school graduate, pay a registration fee, and pass an examination administered by the board. Approximately 4,200 individuals are registered with the board.

An individual licensed by the State Board of Public Accountancy, admitted to practice law in Maryland or another state, employed by government in performance of official duties, enrolled to practice before the Internal Revenue Service under Circular 230, or serving as an employee or assistant to a registered individual tax preparer or other exempt individual is exempted from registration requirements.

State Fiscal Effect: General fund revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court. General fund revenues also increase minimally from penalties imposed by the board for violation of the Maryland Individual Tax Preparers Act. Special fund revenues for the Individual Tax Preparers Fund increase minimally from increased compliance with the requirement that individual tax preparers register with the board.

For illustrative purposes only, the board estimates 1,000 previously unregistered individuals will register in fiscal 2016 due to the bill. The registration fee is \$100 and registrations must be renewed every two years. Accordingly, special fund revenues increase by \$100,000 in fiscal 2016 and biennially thereafter. Additional registrants are likely in the following year. Special fund expenditures increase in fiscal 2016 and 2017 for contractual staff to handle the initial influx of new registrants. Existing resources can likely handle future registration renewals.

General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years. Revenues are not affected.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2015
min/mcr

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510