

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Ridley-Thomas Analyst: Jennifer Bettencourt Bill Number: SB 797

Related Bills: See Legislative History Telephone: 845-5163 Amended Date: September 7, 2007

Attorney: Douglas Powers Sponsor: _____

SUBJECT: Tax Preparer/Employee Requirements

SUMMARY

This bill would add requirements for employees of tax preparers.

SUMMARY OF AMENDMENTS

The September 7, 2007, amendments would, among other things, add language to the Business and Professions Code that would specify requirements for employees of tax preparers that prepare income tax returns.

This analysis will only address the provisions that would impact the Franchise Tax Board (FTB).

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's staff, the purpose of the provisions of this bill that affect FTB is to ensure proper and accurate preparation of tax returns by tax preparers and their employees.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2008.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Federal law does not impose certification requirements for tax preparers relating to ethics, professional conduct, or education. Only Certified Public Accountants (CPAs), Enrolled Agents (EAs), or attorneys can represent taxpayers before the IRS in all matters, including audits, collections, and appeals.

Board Position:

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Department Director

Date

Selvi Stanislaus

9/17/07

The Tax Preparers Act, enacted in California in 1996, regulates a tax preparer's professional conduct, ethics, and bonding requirements. Any tax preparer, defined as "a person who, for a fee, assists with or prepares tax returns for another person or who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who holds himself or herself out as offering those services," must register with CTEC unless otherwise exempt.

The following tax preparers are exempt from registering with CTEC:

- An individual with a current valid license issued by the California Board of Accountancy (CPA)
- An individual who is an active member of the State Bar of California (attorney)
- An individual who is enrolled to practice before the Internal Revenue Service (EA)
- Employees of the individuals listed above
- Certain employees of a trust company or financial institution

The three primary requirements to complete registration with CTEC include the following:

- Receive at least 60 hours of tax preparer education from a CTEC approved provider,
- Maintain a \$5,000 Tax Preparer Bond issued by a surety company admitted to do business in California, and
- Complete, on an annual basis, not less than 20 hours of continuing education from a CTEC approved provider.

Current state law authorizes FTB to assess a penalty of up to \$5,000 on tax preparers that are required to register with CTEC and have failed to do so.

THIS BILL

This bill would require income tax returns prepared by an employee of an exempt tax preparer to be signed by either:

- An exempt tax preparer (CPA, attorney, or EA), or
- A tax preparer who is registered with CTEC.

This requirement would not apply to an employee who is exempt under current law, registered with CTEC, or is an employee of a trust company or financial institution with respect to returns prepared within the scope of their employment.

Finally, this bill would add that tax preparation includes entering data into a computer.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

SB 229 (Figueroa, Stats. 2005, Ch. 658) requires FTB to impose a penalty on tax preparers that fail to register with CTEC.

OTHER STATES' INFORMATION

Of the other states, *Oregon* is the only state that sets competency and ethical standards for tax preparers similar to California and requires any person preparing a personal income tax return for a fee to be licensed by the Oregon State Board of Practitioners. CPAs licensed by the Oregon Board of Accountancy and members of the Oregon State Bar who prepare returns are exempt from the licensing requirements.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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