



Analysis of Amended Bill

Author: Stone	Sponsor: None	Bill Number: AB 1140
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Subject

Model Disclosure Form

Summary

This bill, under the Business and Professions Code (BPC), would establish disclosure requirements for tax preparers, and would require the Franchise Tax Board (FTB) to develop model disclosure forms and discipline violators of the disclosure requirements.

This analysis only addresses the provisions of the bill that would impact the department's programs and operations.

Recommendation – No position.

Summary of Amendments

The April 1, 2019, amendments modified the tax preparer disclosure requirement that would be created under the BPC, and added the requirement for the FTB to develop a model disclosure form.

The April 22, 2019, amendments modified the disclosure requirement, required the FTB to issue warnings and fines for failure to disclose, and made other clarifying and technical changes.

The January 23, 2020, amendments modified the original disclosure requirement proposed by this bill and added an additional disclosure requirement.

Reason for the Bill

The reason for this bill is to ensure taxpayers have access to transparent prices and information when making tax preparation choices.

Effective/Operative Date

This bill would be effective January 1, 2021, and would be operative as of that date.¹

Program Background

State law requires anyone who prepares tax returns for a fee and is not an exempt preparer to register as a tax preparer with the California Tax Education Council (CTEC). Exempt preparers are California certified public accountants (CPAs), enrolled agents, attorneys who are members of the State Bar of California, and certain specified banking or trust officials.²

Requirements to become a registered tax preparer include taking a qualified CTEC-approved education class, purchasing a tax preparer surety bond, obtaining a Preparer Tax Identification Number (PTIN) from the Internal Revenue Service (IRS), registering with CTEC, and paying a registration fee.

Federal/State Law

The Tax Preparation Act, under the BPC, provides that it is a violation for a tax preparer to fail to register as a tax preparer with the CTEC, a nonprofit organization, and the FTB must notify the CTEC when it identifies an individual who violated the registration requirement with the CTEC.

CTEC may enter into agreements with the FTB to provide reimbursement to the FTB for assistance in carrying out enforcement activities consistent with the Tax Preparation Act.

Under the Revenue and Taxation Code (R&TC), the FTB may assess a penalty for the failure to register as a tax preparer with the CTEC, unless it is shown that the failure was due to reasonable cause and not due to willful neglect.³

Tax preparers may be subject to penalties for failure to be diligent in determining eligibility for the federal Earned Income Tax Credit (EITC) and the California EITC.⁴

¹ The effective date is premised that the bill will be enacted by September 30, 2020.

² BPC sections 22251 and 22258.

³ R&TC section 19167(a)(4).

⁴ Internal Revenue Code (IRC) section 6695(g) and R&TC section 19167(a)(5).

This Bill

This bill, under the BPC, would require a tax preparer, prior to preparing a tax return for a client, to provide a written disclosure to the client that contains all of the following information:

- An itemized statement in table format of the costs and fees charged by the tax preparer for usual and customary tax preparation services, including, but not limited to, Form 3514 and Schedule EITC (Form 1040), or subsequent versions of those forms.
- A statement that an individual with income below \$66,000 may be eligible for free online tax preparation services, and an individual with income below \$56,000 may be eligible for free in-person tax preparation services through the IRS Volunteer Income Tax Assistance program (VITA). The statement would be required to identify the IRS' internet websites where an individual may find additional information on each program and the Franchise Tax Board's CalFile internet website. The disclosure would be required to reflect the updated income amount for the current tax year, if the income threshold changes in subsequent years.
- The tax preparer's federal PTIN.

After preparing a tax return for a client, the tax preparer would be required to provide a written disclosure to the client including all of the following information:

- The total cost the client is being charged by the tax preparer.
- The tax preparer's signature and the date the tax preparer signed the disclosure.
- The federal employer identification number.
- The tax preparer's contact information, including, but not limited to, the tax preparer's name, telephone number, address, and the tax preparer's federal PTIN. This information must be provided for each tax preparer who worked on the tax return.

The disclosures that are required by this bill, must be:

- Provided on paper, clearly legible, not less than 12-point type, signed and dated by the client, and retained by the tax preparer for at least three years.
- Made available in English and the five languages listed in Civil Code section 1632: Spanish, Chinese, Tagalog, Vietnamese, and Korean.

The FTB would be required to develop model disclosure forms, and make those forms available on the FTB's internet website.

A violation of the section that would be created by this bill would not be subject to certain penalties under the BPC, but instead would be subject to the following penalties:

- For a first violation, the tax preparer would be subject to a warning by the FTB.
- For a second or subsequent violation, the tax preparer would be subject to a fine of seven hundred fifty dollars (\$750) and discipline by the FTB consistent with the provisions of the Tax Preparation Act. Moneys collected by the FTB, upon appropriation by the Legislature, would be used to fund the federal VITA program and EITC outreach efforts.

The FTB would be required to notify CTEC of a violation.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Implementing this bill would require changes to existing tax forms and instructions, education and outreach, and substantial changes to information systems.

The fine that would be created by this bill lacks language granting the FTB authority to collect the fine under the R&TC. If this is inconsistent with the author's intent, the bill should be amended. It is unclear how the FTB would learn that a tax preparer failed to provide the requisite disclosures that would be required by this bill. Additionally, the bill is silent on how a fined tax preparer would challenge the fine.

The term "tax preparer," as defined under the BPC, could include both the individual tax preparer and the business for whom the individual works preparing tax returns. It is unclear whether the fine would be imposed on the individual or the employer for whom the individual works. For clarity and consistency with the author's intent, it is recommended that the bill be amended.

This bill uses the undefined term "discipline." It is unclear what additional action the FTB would be required to take for subsequent violations of the bill's disclosure requirements. The absence of definitions to clarify this term could lead to disputes with tax preparers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

This bill uses the undefined phrase "usual and customary tax preparation services." The absence of definitions to clarify this phrase could lead to disputes with tax preparers. For clarity and ease of administration, it is recommended that the bill be amended.

This bill would require that the tax preparer provide the "federal employer identification number" on the statement of actual costs. For clarity and uniformity within the bill, the author may want to specify "tax preparer's federal employer identification number".

To clarify that CTEC shall reimburse the FTB for costs related to this bill, it is recommended that the bill be amended.

It is recommended that the bill be amended to grant regulatory authority for purposes of administering this bill's provisions, and an exemption from the rulemaking procedures required under the Administrative Procedures Act (APA).

The bill is silent on when an appropriation would be made to fund the VITA program and EITC outreach efforts.

Legislative History

AB 3143 (Low, Chapter 597, Statutes of 2018), until January 1, 2023, allows the CTEC to enter into agreements with the FTB to provide reimbursement to the FTB for assistance in carrying out enforcement activities consistent with the Tax Preparation Act.

SB 1077 (Greene, Chapter 1137, Statutes of 1997) shifted responsibility for overseeing tax preparers from the Tax Preparer Program within the Department of Consumer Affairs to a registration program under the newly established CTEC, that is a single nonprofit organization exempt from taxation under IRC section 501(c)(3).

Fiscal Impact

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

Economic Impact

Revenue Estimate

This bill as amended January 23, 2020, would not impact state income or franchise tax revenue. This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

Research indicates that there are about 80,000 tax preparers in California. This includes CPAs, attorneys, enrolled agents, and registered tax preparers. To determine the magnitude of the imposition of a fine on tax preparers, both the number of tax preparers and their second or subsequent violations would need to be known. Since it is difficult to predict the number of finable violations, the revenue is unknown. However, it is estimated that for that for every 10,000 second or subsequent violations reported to the FTB, \$6 million in fines would be issued.

Policy Concerns

This bill's disclosure requirement would only apply to tax preparers subject to registration with CTEC, and would exclude certified public accountants, attorneys, and enrolled agents.

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