



Analysis of Amended Bill

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Bill Number: AB 1140

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Amended: April 1, 2019, and
April 22, 2019

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Related Bills: See Legislative
History

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 a model disclosure form and administer 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, amendment modified the disclosure requirement, required the FTB to issue warnings and fines for failure to disclose, and made other clarifying and technical changes.

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

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, 2020, and would be operative as of that date.

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.

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 CTEC¹ and the FTB must notify the CTEC when it identifies an individual who violated the registration requirement with the CTEC.²

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 Tax Preparation Act, under BPC sections 22250-22259, created CTEC, a nonprofit organization.

² BPC section 22253.2.

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 total amount of all costs and fees being charged by the tax preparer.
- A statement that an individual with income below sixty-six thousand dollars (\$66,000) may be eligible for free, in-person tax preparation services through the IRS Volunteer Income Tax Assistance program (VITA), or online through free tax preparation software. The statement would be required to identify the IRS' internet websites where an individual may find additional information. 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.

The disclosures that would be required by this bill must be:

- On a single sheet of paper and written in 20-point type or larger, 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 a model disclosure form, and make the form 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,⁵ 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 the council of a violation.

⁵ BPC sections 22256(b) or 22257.

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 disclosure 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 these terms 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.

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).

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).

Other States' Information

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. *Minnesota and New York* are the only states that set disclosure standards for tax preparers similar to those that would be created by this bill. These states were selected and reviewed due to their similarities to California's economy, business entity types, and tax laws.

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 April 22, 2019, 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.

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