

TAXPAYER PROTECTION ACT

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Senate Bill 269 (H-4) as referred to second House committee

Sponsor: Sen. Erika Geiss

1st House Committee: Tax Policy

2nd House Committee: Ways and Means

Senate Committee: Finance

Complete to 2-19-20

Analysis available at

<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 269 would add a new section to 1941 PA 122, known as the Revenue Act, to regulate the conduct of *paid tax preparers*. The added section would be called the Taxpayer Protection Act.

Paid tax preparer would mean a person who prepares for compensation—or employs one or more people to do so—all or a substantial portion of an individual income tax return or claim for refund. However, the following would not be a paid tax preparer under the bill:

- A person licensed as a certified public accountant under Article 7 of the Occupational Code.
- A person licensed as a certified public accountant in another jurisdiction who meets the Occupational Code requirements to practice public accountancy in this state.
- A person employed by a firm that is either licensed or exempt from licensure under Article 7 of the Occupational Code who prepares a tax return under the supervision of an individual described above.
- A person who prepares a return as a volunteer through a nonprofit organization or other organization offering tax assistance.

Signature and Tax Identification Number and Civil Penalty

Under the bill, by January 1, 2020, an individual income tax return or claim for refund prepared by a paid tax preparer would have to be signed by the preparer and bear his or her tax identification number. A paid tax preparer who failed to sign a return or claim and provide his or her tax identification number would have to pay a civil penalty of \$50 for each failure, to a maximum of \$25,000 during any calendar year, unless the failure had a reasonable cause as determined by the Department of Treasury. The department could use an amount equal to the total penalties collected under this section to regulate paid tax preparers.

Prohibited Conduct

The bill would prohibit a paid tax preparer from knowingly doing any of the following:

- Preparing a return or claim for refund that includes an understatement of a taxpayer's liability due to either an unreasonable position or willful or reckless conduct.
- Failing to do any of the following when required:
 - Furnish a copy of a return or claim for refund.
 - Sign a return or claim for refund.

- Furnish an identifying number.
- Retain accurate and complete records, work papers, and other documents necessary to properly determine tax liability.
- File correct information returns.
- Determine eligibility for tax benefits.
- Negotiating a warrant, draft, or check issued by the Department of Treasury or receiving, without the taxpayer's knowledge, a refund or credit by electronic payment into the paid tax preparer's account.
- Engaging in conduct subject to a criminal penalty under the Revenue Act.
- Misrepresenting his or her eligibility to practice before the Department of Treasury or otherwise misrepresenting his or her experience or education.
- Guaranteeing the payment of any tax refund or the allowance of any tax credit.
- Engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws of the state.

Injunctive Relief

The bill would allow the Department of Treasury to bring an action to enjoin a paid tax preparer from engaging in conduct described above or from further acting as a paid tax preparer. If the court issued an injunction, the paid tax preparer would have to reimburse the department for all costs and fees incurred in prosecuting the case.

If the court found that a paid tax preparer had continually or repeatedly engaged in conduct prohibited by the bill and that enjoining that conduct would not be sufficient to prevent the person's interference with the proper administration of Michigan's individual income tax laws, the court could enjoin the person from acting as a paid tax preparer in this state. That a person had been enjoined in the previous five years from preparing tax returns or claims for refund for the United States or any other U.S. state or territory would establish a prima facie case for an injunction to be issued.

Information for Taxpayers

Beginning with the 2021 tax year and for each tax year thereafter, the Department of Treasury would have to post on its website and include in the instruction booklet that accompanies the annual individual income tax return both of the following:

- A clear and concise statement informing the taxpayer that a paid tax preparer must sign a return and provide his or her preparer tax identification number under the provisions of the bill.
- Contact information for the Department of Treasury's fraud unit.

Proposed MCL 205.4a

FISCAL IMPACT:

Senate Bill 269 would generate new oversight and administrative costs for the Department of Treasury. The magnitude of these costs is unknown but likely not significant. The bill would authorize the department to use an amount equal to the total civil penalties collected to regulate the paid tax preparers. However, because the bill does not directly allocate funds to the department, any new funding for the department to accommodate costs generated under this bill would be subject to appropriation.

The bill would also have an indeterminate, but likely minimal, fiscal impact on local courts. The impact would depend on how provisions of the bill affected court caseloads and related administrative costs. Any increase in fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

POSITIONS:

A representative of H&R Block testified in support of the bill. (1-15-20)

The Michigan League for Public Policy indicated support for the bill. (2-19-20)

The following entities indicated a neutral position on the bill (1-15-20):

- Department of Treasury
- Michigan Association of Certified Public Accountants (MICPA)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.