



Senate Fiscal Agency
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Senate Bill 269 (as passed by the Senate)
Sponsor: Senator Erika Geiss
Committee: Finance

Date Completed: 9-20-19

RATIONALE

Each year, many taxpayers use the services of paid tax preparers to prepare their tax returns. Most of these paid tax preparers submit accurate and complete tax materials on behalf of their clients. However, some paid tax preparers are unqualified and repeatedly submit incorrect tax materials, creating confusion for taxpayers and additional work for entities that process those returns. Moreover, some paid tax preparers apparently have submitted fraudulent returns or stolen the identities of their clients. Thus, it has been suggested that the State enact legislation to protect taxpayers from those situations and to stop inexperienced or dubious paid tax preparers from submitting tax returns.

CONTENT

The bill would create the "Taxpayer Protection Act" within the revenue Act to do the following:

- **Require, beginning January 1, 2020, any return or claim for refund prepared by a paid tax preparer to be signed by him or her and to include his or her identification number (ID) and specify a civil penalty of \$50 for each failure to meet this requirement.**
- **Allow the Department of Treasury to use an amount equal to the total penalties collected under the bill to regulate paid tax preparers.**
- **Prohibit a paid tax preparer from engaging in certain conduct.**
- **Allow the Department to commence suit to enjoin any paid tax preparer from further engaging in any conduct described in the bill or from further acting as a paid tax preparer.**

"Paid Tax Preparer" Definition

"Paid tax preparer" would mean any person who prepares for compensation, or who employs one or more people to prepare for compensation, any return or claim for refund, or a substantial portion of any return or claim for refund under the revenue Act. The term would not include any of the following:

- An individual who was licensed as a certified public accountant under Article 7 (which concerns public accounting) of the Occupational Code.
- An individual whose principal place of business was not in Michigan and who satisfied the requirements regarding public accountants whose principal place of business was outside Michigan listed in the Occupational Code.
- An individual who was employed by a firm that was licensed under Article 7 of the Occupational Code, or exempt from licensure under the Code, and who prepared a return under the supervision of an individual described above.

- An individual who prepared a return as a volunteer through a nonprofit organization or other organization offering tax assistance.

Tax Preparer Signature & ID Number

Under the bill, beginning January 1, 2020, any return or claim for refund prepared by a paid tax preparer would have to be signed by the paid tax preparer and would have to bear his or her ID number.

In addition to any other penalty provided by law, any person who was a paid tax preparer with respect to any return or claim for refund who failed to sign the return or claim for refund and to provide their preparer tax ID as required by the bill would have to pay a civil penalty of \$50 for each failure, unless it could be shown that the failure was due to reasonable cause as determined by the Department of Treasury. The civil penalty imposed on any paid tax preparer with respect to returns or claims for refund filed during any calendar year could not exceed \$25,000. The Department could use an amount equal to the total penalties collected to regulate paid tax preparers.

Prohibited Actions

A paid tax preparer could not do any of the following:

- Prepare any return or claim for refund that included an understatement of a taxpayer's liability due to an unreasonable position or willful or reckless conduct.
- Where required, fail to furnish a copy of a return or claim for refund; fail to sign a return or claim for refund; fail to furnish an identifying number; fail to retain a copy of records; fail to file correct information returns; or fail to determine eligibility for tax benefits.
- Negotiate a check issued to a taxpayer by the Department without the taxpayer's permission.
- Engage in any conduct subject to any criminal penalty provided in the revenue Act.
- Misrepresent the paid tax preparer's eligibility to practice before the Department or otherwise misrepresent the paid tax preparer's experience or education.
- Guarantee the payment of any tax refund or the allowance of any tax credit.
- Engage in any other fraudulent or deceptive conduct that substantially interfered with the proper administration of the tax laws of the State.

Injunction Relief

In a court of competent jurisdiction, the Department could commence suit to enjoin any paid tax preparer from further engaging in any conduct described in the bill 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 any conduct prohibited in the bill and that an injunction prohibiting the conduct would not be sufficient to prevent the person's interference with the proper administration of Michigan's tax laws, the court could enjoin the person from acting as a paid tax preparer in Michigan. The fact that a person had been enjoined from preparing tax returns or claims for refund for the United States or any other state, in the five years preceding the petition for an injunction, would establish a prima facie case for an injunction to be issued.

Proposed MCL 205.4a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

According to the Internal Revenue Service, during the 2016 tax year, about 53.3% of taxpayers used a paid tax preparer. It is important that a taxpayer who chooses to use a paid tax preparer works with someone who is competent, professional, and honest, as each taxpayer ultimately is responsible for the accuracy of his or her return, regardless of who prepares it. The bill would protect taxpayers from unscrupulous and unqualified paid tax preparers by establishing a mechanism to identify and prevent bad actors from operating in Michigan.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill could have a positive fiscal impact on local government. Under the bill, a tax preparer who failed to provide their preparer tax identification (ID) number on a tax return would incur a \$50 civil fine for each return that did not include the tax ID number, up to a maximum fine of \$25,000 in a calendar year. Any additional revenue from imposed fines would go to local libraries. The amount of additional revenue to be expected is indeterminate and would depend on the actual number of violations that occur in a calendar year.

The bill would have no fiscal impact on the Department of Treasury, as it likely would not increase the expenditures for tax collections, processing, or auditing tax returns beyond current appropriations.

The bill could have a negative fiscal impact on local court systems as a result of an increase in litigation, however, the impact likely would be minimal.

Fiscal Analyst: Joe Carrasco
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.