

Preliminary Evaluation of the State Board of Individual Tax Preparers

Recommendations:	Waive from full evaluation Extend termination date by 10 years to July 1, 2026 Require Follow-up Report by October 1, 2015
-------------------------	---

Year Established: 2008

Most Recent Prior Evaluation: Not applicable

Composition: Eight members (seven members with at least five years of tax preparation experience and one member of a nonprofit tax program or nonprofit consumer advocate program)

Two vacancies

Staff: Two (contractual full-time administrator, contractual full-time administrative assistant)

Contractual investigators; other shared personnel support the board (assistant Attorney General, regulations coordinator, fiscal and information technology personnel)

Regulated Profession: Individual tax preparers (4,014 active registrants as of September 3, 2013)

Authorizing Statute: Title 21, Business Occupations and Professions Article

Evaluation Completed by: George H. Butler, Jr., Department of Legislative Services, 2013

Overview of Regulatory Activity

The General Assembly established the State Board of Individual Tax Preparers to protect the public from incompetent, unqualified, and corrupt tax preparers and establish standards for the field of tax preparation. Chapter 623 of 2008 (the Maryland Individual Tax Preparers Act) established the eight-member board to register qualified individuals to provide individual tax preparation services. The Act also established the Individual Tax Preparers Fund to cover the costs associated with administration and enforcement of the Maryland Individual Tax Preparers Act. Chapter 623 requires an individual to be registered by the board before providing individual tax preparation services in the State and specifies the qualifications for an applicant to qualify for registration (the individual must be 18 years of age or older, possess a high school diploma or have passed an equivalency examination, and pass an examination administered by the board). Registration is valid for two years; a continuing education requirement must be fulfilled for renewal. The Act authorizes the board to deny registration, reprimand a registered individual, or suspend or revoke a registration for fraudulently obtaining or using a registration, engaging in criminal activity, or engaging in professional misconduct. Furthermore, in addition to reprimanding a registrant or suspending or revoking a registration, the board may impose a civil penalty for any violation of the Act. A violation of the Act also constitutes an unfair or deceptive trade practice under the Maryland Consumer Protection Act, subject to that Act's civil and criminal penalties. Under Chapter 623, the board terminates on July 1, 2016. Chapters 85 and 86 of 2010 repealed the requirement that the examination administered by the board may not be less stringent than the Individuals section of the Special Enrollment Examination for enrolled agents.

Although enacted in 2008, Chapter 623 was not implemented until fiscal 2011 because the necessary staff and corresponding funds had not yet been authorized to create the board. Consequently, the board did not begin registering individuals until June 14, 2011. To date, the board has issued 4,035 initial registrations and 105 renewals. Since that time, the board has fulfilled its duty through efficient and timely registration and complaint resolution processes; the board does not have a backlog of complaints (see **Appendix 1**). The board is entirely special funded by fees collected for registration (see **Appendix 2**). The board experienced a decrease in direct costs from fiscal 2012 to 2013 due to a decrease in anticipated costs for computer programming and information technology support services. However, it anticipates an increase in these direct costs in fiscal 2014, as well as added expenditures for its share of the costs of renovating the Division of Occupational and Professional Licensing's board room. The board's fund balance is projected to be over the target of 30% of expenditures by the end of fiscal 2014, assuming current registration trends continue and fees remain the same. The fund balance will provide the board ample funds to meet its operating expenses in fiscal 2015, a year of projected reduced revenues in light of the two-year registration cycle, and sufficient funds should the board implement a State-administered competency exam.

The board currently has two vacancies among its membership, one of which just occurred in August 2013. The position representing large commercial individual tax preparers has been vacant since May 2012. An additional member announced to the board in August 2013 that she is relocating out of State and was, therefore, forced to resign her position. The department has

retained a retired senior manager within the Division of Occupational and Professional Licensing as an Appointment Advisor to help fill these vacancies.

Conclusion and Recommendations

For the continued benefit of the public, Maryland should maintain its regulation of tax preparation services. According to the Office of the Comptroller, while 8,117 fraudulent or questionable returns were filed during the period from July 1, 2007, through June 30, 2010 (*i.e.*, preceding the board's establishment), 7,283 fraudulent or questionable returns have been filed since July 1, 2010. This marks a reduction of 900 fraudulent or questionable filings during the board's existence. Although there may not be a direct link between the reduction and the board's creation, there is reason to believe that the board's actions have contributed to the reduction. Therefore, the Department of Legislative Services (DLS) recommends that the Legislative Policy Committee waive the board from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2026. DLS further recommends that the board submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2015, providing an update of the board's expenditures and special fund balance and detailing any recommendations for legislative changes necessary to provide any additional authority the board needs to address complaints alleging the unregistered provision of individual tax preparation services.

Policy Issues for Consideration

Currently, the board is staffed by a contractual full-time administrator and contractual full-time administrative assistant. According to the Department of Labor, Licensing, and Regulation, no other regulatory board has a contractual executive director. A permanent executive director and administrative assistant would provide stability and enhanced professionalism to the board. **The board should work with the Department of Budget and Management and other relevant stakeholders to convert its contractual staff positions to regular positions.**

In January 2013, the United States District Court for the District of Columbia enjoined the Internal Revenue Service (IRS) from enforcing federal regulatory requirements for registered tax return preparers, including the requirement that tax return preparers complete the Registered Tax Return Preparer (RTRP) Competency Test or continuing education. Although the decision did not directly affect State regulation of individual tax preparers, the board had planned to use the RTRP exam as its competency test for State registrants. Its suspension at the federal level may therefore affect State registration. The IRS has appealed this decision, and the board extended the deadline for Maryland registered tax preparers to take and pass an examination until the earlier of December 31, 2014, or, should the IRS offer and require the RTRP exam, the deadline to complete the RTRP exam. In addition, the board has appointed a special committee to "gain a better understanding of and to begin the procurement process, should the board decide to offer its own exam." **The board should continue to monitor this decision and should the**

board decide to offer its own exam, monitor special fund levels and adjust registration fees accordingly to ensure it has the fiscal resources to develop and implement the exam.

Introduced during the 2013 legislative session, Senate Bill 67 would have authorized the board to impose a civil penalty of up to \$5,000 on a person who violates any portion of the Maryland Individual Tax Preparers Act. Under current law, the board may impose a civil penalty only on an applicant or registered individual in addition to otherwise reprimanding or suspending the individual for violating the Act. According to the Department of Labor, Licensing, and Regulation, current law leaves unregistered individuals who provide individual tax preparation services free from liability under the Act. However, they remain subject to the Maryland Consumer Protection Act, which includes civil and criminal penalties, as enforced by the Office of the Attorney General. **The board should continue to work with the General Assembly and relevant stakeholders to clarify the scope of the board's power to administer civil sanctions against unregistered individuals.**

The Individual Tax Preparers Fund has maintained a healthy fund balance over the past two fiscal years, with a projected fund balance for fiscal 2014 in excess of \$280,000, or 147% of annual operating expenses. This far exceeds the board's target of 30% of operating expenses. The board may face increased expenditures should the board procure its own competency exam. According to the Department of Labor, Licensing, and Regulation, the board would contract with a private vendor to develop the exam, and exam development costs will be paid from the fund and not recovered. In addition, a vendor would administer the exam to applicants and charge applicants an exam fee to cover exam administration costs. However, if the IRS once again offers and requires the RTRP exam, the board could resume its earlier practice of registering qualified applicants with a valid active registration with the IRS as an individual tax preparer. In addition, the board would face increased expenditures if the board's contractual executive director and administrative assistant positions were converted to regular positions due to the provision of fringe benefits. **If the board does not offer its own competency exam or convert its contractual staff positions to regular positions and fund balances continue to exceed target levels, the board should examine registration fees for potential reduction.**

As noted above, the General Assembly established the State Board of Individual Tax Preparers to protect the public from incompetent, unqualified, and corrupt tax preparers and establish standards for the field of tax preparation. However, members of the public may not capitalize on the board's resources and fail to report unregistered tax preparers if they are unaware of the board's existence. The board has reached out to several tax preparation professional associations to increase awareness of requirements under the Maryland Individual Tax Preparers Act. In addition, a February 2012 article in the *Baltimore Sun* highlighted the board's creation as a mechanism to protect the public. **The board should continue its outreach to both the professional tax preparation community and the Maryland public.**

Appendix 1.
Resolution of Complaints Received
Fiscal 2012 and 2013

Resolution of Complaints Received

	<u>FY 2012</u>	<u>FY 2013</u>
New Complaints	9	14
<i>Type of Complaints</i>		
Practicing Without Registration	3	6
Failure to File Return	1	2
Failure to File Timely Return	1	
Missing Refund	2	3
Inflation of Deductions	1	1
Mistakes on Return		1
Falsification of Return		1
Fee Dispute	1	
<i>Time for Resolution</i>		
Within Six Months	6	9
More than Six Months	3	2
Pending		3
<i>Disposition of Resolved Complaints</i>		
Closed/Resolved	3	4
Closed/Flagged ¹	2	2
Closed/Withdrawn		1
Closed/Registration Denied		1
Closed/Registered	1	1
Closed/Lack of Jurisdiction	1	2
Closed/Respondent Nonresponsive	1	
Closed/Complainant Nonresponsive	1	
Open/Refer to Committee		3

¹ “Flagged” references an informal designation which denotes that an application from the individual may not be released until approved by the board.

Source: State Board of Individual Tax Preparers, Department of Legislative Services

Appendix 2.
Financial History of the State Board of Individual Tax Preparers
Fiscal 2011-2014

	<u>FY 2011¹</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>Projected FY 2014</u>
Beginning Balance	\$0	\$3,804	\$174,077	\$118,392
Revenues	5,500	333,400	85,569	350,000
Total Available Funds	\$5,500	\$337,204	\$259,646	\$468,392
Direct Costs	1,696	\$149,735	\$126,290	\$175,000
Indirect Costs	0	13,392	14,964	17,000
Total Expenditures	\$1,696	\$163,127	\$141,254	\$192,000
Ending Fund Balance	\$3,804	\$174,077	\$118,392	\$276,392
Balance as % of Expenditures	224%	107%	83%	147%
Target Fund Balance (30% of expenditures)	\$509	\$48,938	\$42,376	\$57,600

¹ Although Chapter 623 of 2008 took effect on June 1, 2008, the board did not commence operations until fiscal 2011.

Source: State Board of Individual Tax Preparers

Appendix 3.
Written Comments by the State Board of
Individual Tax Preparers

The board reviewed a draft of this preliminary evaluation and provided these written comments. Appropriate factual corrections and clarifications have been made throughout the document; therefore, references in board comments may not reflect the final version of the report.

November 12, 2013

Michael Rubenstein
Principal Policy Analyst
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, MD 21401-1991

Dear Mr. Rubenstein:

The Department of Labor, Licensing and Regulation and the State Board of Individual Tax Preparers have received the draft of the preliminary evaluation of the Board conducted by the Department of Legislative Services (DLS) pursuant to the Maryland Program Evaluation Act. We appreciate the time and attention that DLS spent reviewing the Board's operations.

We are pleased that the report found that the Board is fulfilling its statutory duties and recommended that the Legislative Policy Committee waive the Board from full evaluation. Further, the Department concurs with the recommendations included in the report; the Department strongly agrees with the recommendation that the Board work with the Department of Budget and Management to convert its contractual staff positions to regular positions. The Department and Board will, in a timely manner, address the issues raised in the report and will submit a follow-up report to specified committees of the General Assembly by October 1, 2015.

After reviewing the report, we have identified the following factual discrepancies and/or request the following changes:

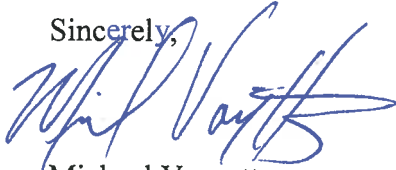
- on page three, in the last paragraph, the report states: "Although the decision did not directly affect State regulation of individual tax preparers, the board has used the [Registered Tax Return Preparer Competency Test] as its competency test for State registrants." In fact, this test was never implemented at the federal level. However, it is true that the Board had planned to use the RTRP test.
- on page four, in the second paragraph, the report states: "DLS assumes that the board would contract with a private vendor to develop the exam; the vendor would administer the exam to applicants, and in turn the board would charge applicants." The Department advises that the report should clarify that exam *development* costs

PHONE: 410-230-6221 • EMAIL: dirvin@dllr.state.md.us • INTERNET: www.dllr.maryland.gov

will be paid from the Board's fund and will not be recovered. However, exam fees will be set by a vendor to cover exam *administration* costs.

The Department and the Board would like to express appreciation for the professionalism, courteousness, and attention to detail demonstrated by your staff members, in particular Mr. George Butler, while conducting this review. We look forward to working with legislative staff as we address issues that were raised in the report. If your office should require additional information, please do not hesitate to contact me at (410) 230-6225.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Vorgetts", with a stylized flourish at the end.

Michael Vorgetts
Acting Commissioner

Cc: Leonard Howie III, Secretary
Douglas Blackstone, Executive Director
Patricia Snell, Chair
George Butler, Policy Analyst, Department of Legislative Services