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Model Individual Tax Preparer Regulation Act

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SUBTITLE 1. SCOPE; DEFINITIONS

Section 1. **Title and scope.**

(a) Title. This Act shall be known and cited as the "Individual Tax Preparer Regulation Act." This Act shall be liberally construed to effectuate its purpose. The purpose of the Act is to ensure that paid tax preparers have the knowledge and expertise to provide advice and assistance to taxpayers in a competent and ethical manner, and to protect taxpayers as consumers when purchasing tax preparation services.

(b) Scope. No person (including any officer, agent, employee or representative) may individually, or in conjunction or cooperation with another person, provide individual tax preparation services unless the person has complied with the provisions of this Act. The provisions of this Act shall apply to any person who seeks to evade its applicability by any device, subterfuge, or pretense whatsoever.

Commentary

Subsection (a) sets the stage for the remainder of the Act by clearly announcing that the legislature intends that the Act be liberally construed to effectuate its purpose and is a consumer protection law. Subsection (a) also enunciates the Act's specific purpose.

Subsection (b) defines a broad scope of coverage for the Act, and makes clear that the scope includes those who attempt to evade the Act. These directives will give guidance to the courts when the Act's provisions are applied and interpreted.

Section 2. **Definitions.**

The following definitions apply in this Act:

(a) "Applicant" shall mean a person who applies for registration as a tax preparer.

(b) "Board" shall mean [the state board or agency responsible for enforcing this Act].

(c) “Consumer” shall mean any natural person who, singly or jointly with another consumer, files a federal or state personal income tax return.

(d) “Registered preparer” means an individual who has been issued a registration by the Board to provide individual tax preparation services.

(e) “Provide individual tax preparation services” means to prepare, advise, or assist in the preparation of, or assume final responsibility for another person’s preparation of, a federal or state personal income tax return of a consumer for valuable consideration.

(g) “Registration” means, unless the context requires otherwise, an authorization issued by the Board to provide individual tax preparation services.

Commentary

There are a number of critical definitions in the Act:

(b) “Board” is the state agency charged with the responsibility of enforcing the Act. It can either be an existing Board that is responsible for licensing occupations or can be a newly established Board. If newly established, Optional Section 3.A contains model language for the Board composition.

(c) “Consumer” essentially means a taxpayer who is a natural person, i.e., an individual, who files a personal income tax return. Thus, this Act does not apply to tax preparation for corporations or other entities that are not natural persons.

(e) “Provide individual tax preparation services” is limited to provision of tax preparation services for (1) a consumer and (2) for compensation. This definition excludes tax preparation services provided to corporations or other entities that are not natural persons. This definition also excludes tax preparation services that are provided without compensation, such as preparation by a volunteer or uncompensated preparation for family members. However, the definition does include tax preparation services where the preparer receive indirect compensation, such as preparation services that are provided in connection with the sale of goods or services (including a loan or other financial services), for which the consumer pays.

Section 3. Exemptions.

The following individuals are exempt from the requirements of this Act:

(a) an individual in good standing with an active license issued by [the board that licenses accountants, such as a state Board of Public Accountancy] or a comparable licensing authority in another state;

(b) an individual in good standing and admitted to practice law in the state or in another state;

(c) an individual employed by a local, state, or federal governmental agency but only in performance of official duties;

(d) an individual enrolled to practice before the Internal Revenue Service who is governed under Circular 230; or

(e) an employee or volunteer of a Volunteer Income Tax Assistance program.

Commentary

This Model Act follows the Maryland structure, which requires each individual tax preparer to be registered. It does not provide for a corporate registration, such as that found in Oregon law. The intent of this Model Act is to ensure that every single individual who prepares taxes for a consumer for compensation has the adequate knowledge and competency to do so.

Like both the Maryland and Oregon laws, the Model Act contains a number of exemptions for individuals who are already subject to licensing or registration and presumably have competency to prepare taxes. These exemptions include attorneys, certified public accountants and “enrolled agents” who are governed by IRS Circular 230. The exemptions also include government employees, such as IRS or state taxing agency employees, who sometimes may assist consumers with the preparation of their returns. Finally, this section exempts employees of a Volunteer Income Tax Assistance (VITA) site. VITA sites have long followed fundamental training and certification requirements. See IRS, Pub. 1084 - IRS Volunteer Site Coordinator’s Handbook 29 (Oct. 2012)(requiring that all “[v]olunteer preparers must pass at least the basic certification test. A minimum score of 80% is required for each certification test”).

The Maryland law has one additional exemption not in in the Model Act, for employees or assistants of registered preparers or exempted individuals. If such an exemption is desired, the following language may be used to exempt them:

(6) an individual serving as an employee of or assistant to a registered tax preparer or exempted person in the performance of official duties for the registered tax preparer or exempted person, so long as :

(a) such individual provides services and is located in the same physical office as the registered tax preparer or exempted person;

(b) the registered tax preparer or exempted person directly supervises and oversees the work of such individual; and

(c) such individual is employed by the registered tax preparer or exempted person, or such individual and the registered tax preparer or exempted person are both employed by the same entity.

This is similar to the Maryland exemption. However, the Model Act adds additional requirements for this exemption, to ensure that the employee or assistant works in the same physical office and is directly supervised by a registered preparer or exempted person. These additional requirements are intended to prevent creating a loophole for certain fringe preparers who might claim that a third-party vendor that provides them with software and back office services is the “registered preparer,” and they are merely assistants for the vendor. These arrangements between fringe providers and the third-party vendors they rely upon are discussed in Section B of the accompanying report.

SUBTITLE 2. BOARD ESTABLISHMENT; POWERS

Optional Section 3A. **Establishment of a Board**

(a) There is established a state Board of Individual Tax Preparers.

(b) The Board consists of seven members of which:

- (1) six shall have at least 5 years of tax preparation experience; and
- (2) at least one shall be a member of a nonprofit tax program or nonprofit consumer advocate program.

(c) The Governor shall appoint the members with the advice of [appropriate state officials].

(d) Members of the following groups shall be considered for membership on the Board:

- (1) a member of a nonprofit tax program or nonprofit consumer advocate program;
- (2) a commercial individual tax preparer who has been in practice in the state for more than 5 years;
- (3) a member of the state association of certified public accountants;
- (4) a member of the state society of accountants;
- (5) a member of the state bar association; and
- (6) a member of the National Association of Enrolled Agents.

(e) Each member of the Board shall be:

- (1) a citizen of the United States; and
- (2) a resident of the state.

(f) The term of a member begins on July 1 and shall be four years, except that the terms of initial members shall be staggered as follows: three members shall serve four years, two members shall serve three years and two members shall serve two years.

(g) At the end of a term, a member continues to serve until a successor is appointed. A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.

(h) Each member of the Board is eligible for reappointment but may not serve more than two consecutive terms.

(i) The Governor (1) may remove a member for incompetence, misconduct, neglect of duties, or other sufficient cause; and (2) shall remove a member who ceases to meet the requirements under which the member was appointed, as provided under subsections (b) and (c) of this section.

(j) From among its members, the Board shall elect a chair and other officers as necessary. The manner of election and the term of an officer shall be as the Board determines.

(k) A majority of the members then serving on the Board is a quorum.

Commentary

This section is optional, as a state may choose to place the Board's duties in an existing agency instead of creating a new agency. This section provides a potential structure if the choice is made to create a new agency. It is primarily derived from the Maryland law, with some modification.

The Model Act contemplates that the operations of the Board and the administration of the Act will be funded by fees paid by preparers, so will be budget-neutral. The Maryland law also includes provisions to create a special fund that receives payment of the fees for registration, examination and renewals, and ensures that such fees are used for the Board's operation. Provisions along these lines may be useful to ensure that the preparer registration program has sufficient funding to operate properly.

Section 4. Powers of the Board

(a) The Board shall adopt rules of professional conduct as appropriate to establish a high standard of integrity and dignity for the practice of providing individual tax preparation services.

(b) The Board shall establish the amount of any fees, including fees for registration, renewal of registration, and for administering the examination described in Section 6.

(c) The Board shall maintain a list of all registered preparers to whom the Board has issued a registration.

(d) The Board shall maintain records of all complaints it receives regarding registered preparers and individuals engaged in providing individual tax preparation services without a registration.

(e) The Board may adopt any rules as it believes are necessary or appropriate to effectuate the purpose of this Act, to provide for the protection of taxpayers or the federal or state treasury, and to assist preparers in interpreting this Act.

Commentary

This section sets forth a number of required duties of the Board, including establishing rules of professional conduct, setting the amount of required fees, maintaining a list of registered preparers, and maintaining a record of all complaints regarding registered preparers and preparers illegally operating without a registration. These duties are necessary for the proper functioning of the Board and the registration system, and many of them are based in large part on Maryland's law.

This section also provides the Board with broad regulatory authority to establish any regulations to implement the Act. Issues will often arise after a statute is passed requiring interpretation, refinement or additional provisions. An administrative agency such as the Board is in the best position to respond to such issues, as it will have the experience and expertise to draft sound regulations that balance the interests of the regulated industry, consumers, and the public.

SUBTITLE 3. REQUIREMENTS FOR REGISTRATION AND RENEWAL

Section 5. Qualifications for Registration

No individual may provide individual tax preparation services unless the individual has been issued a registration by the Board. To qualify for a registration, the applicant must:

- (a) be of good character and reputation;
- (b) be at least 18 years old;
- (c) possess a high school diploma or have passed an equivalency examination;
- (d) present evidence satisfactory to the Board that the applicant has successfully completed at least 60 hours in basic personal income tax law, theory and practice at a qualified education provider pursuant to Section 9 or other institution approved by the Board;

(e) possess a preparer tax identification number issued by the Internal Revenue Service; and

(f) pass either:

- (1) an examination developed and administered by the Board pursuant to Section 6; or
- (2) an examination administered by the Internal Revenue Service intended to test the competency of tax preparers [along with the an examination administered by the Board solely regarding state tax law].

Commentary

This section sets the minimum requirements for an individual to apply for registration. Each of these requirements is based on requirements found in state laws or the IRS regulations. The requirement that an individual be of good character and reputation is found in Maryland's law. The requirements that the individual be over 18 years old and have a high school education are found in both the Maryland and Oregon laws (the IRS regulations also require that the individual be over 18 years old).

The requirement for 60 hours of education in tax law, theory and practice is based on Oregon's law. The requirement to have a preparer tax identification number (PTIN) is of course an IRS requirement, which the Oregon law has also adopted as a requirement.

The requirement to pass a competency examination is based on the IRS regulations, as well as Maryland and Oregon's laws. This section provides alternatives for applicants, permitting them to obtain a registration based on either the IRS examination or a state examination developed by the Board. This section also provides optional language in case there is a desire to require an examination of solely state tax law issues in cases where the applicant chooses to take the IRS examination.

Section 6. Examinations

(a) The Board shall give examinations to applicants at least twice a year, at the times and places that the Board determines. However, the Board may give fewer examinations if the number of applicants seeking to take the examination since the last examination administered by the Board is less than 10 individuals.

(b) The Board shall develop examinations that measure the applicant's knowledge of federal and state personal income tax law, theory, and practice.

(c) The Board shall give each qualified applicant notice of the time and place of examination.

(d) The Board shall adopt regulations that establish the passing score for an examination.

(e) The Board shall notify each applicant of the applicant's examination score.

Commentary

This section sets forth the requirements for the competency examination that the Board will administer as an alternative to the IRS examination (or as the sole competency examination if the IRS is not administering exams). It is based in large part on the Maryland and Oregon laws. The procedural requirements are based on Maryland law, while the requirements regarding the examination's contents are based on Oregon law

The section requires the Board to administer the examination twice per year, but allows the Board to skip this requirement if too few applicants seek to take the state examination. Since the law allows applicants to take the IRS examination as an alternative, if the IRS is administering them, there is a possibility that almost all of the applicants will seek to take that examination instead of a state version. This provision allows the Board to skip administering the examination in those circumstances.

Section 7. Registration procedures

- (a) An applicant for a registration shall submit to the Board an application on a form that the Board shall establish.
- (b) If an applicant qualifies for a registration under this Act, the Board shall send the applicant a notice that states that:
 - (1) the applicant has qualified for a registration; and
 - (2) on receipt of a registration fee set by the Board, the Board will issue a registration to the applicant.
- (c) On payment of the registration fee, the Board shall issue a registration to each applicant who meets the requirements of this Act.
- (d) Unless a registration is renewed as provided in Section 10, the registration shall be valid for a period ending on the last day of the month that is two years from when the registration was issued.

Commentary

This section sets out the actual procedures for registration. It also provides that registrations shall be valid for essentially two years. However, it provides that registrations shall expire at the end of the month of this two-year period. This allows the Board to process renewals at the end of the month instead of a daily basis, simplifying the administrative burden on the Board.

Section 8. **Bond**

(a) Each registered preparer must post a bond in the amount of \$10,000 (to be increased every five years based proportionally on changes in the Consumer Price Index, with amounts rounded to the nearest hundred dollars). This bond must continue in effect for five (5) years after the registered preparer ceases operation in the state.

(b) The bond required by this section shall be in favor of, and payable to, the state and shall be for the benefit of any consumer damaged by any fraud, dishonesty, misstatement, misrepresentation, deceit, violation of this Act, or any unlawful acts or omissions by a registered preparer [, or any employee or assistant of the registered preparer. The registered preparer filing the bond shall identify all employees or assistants, and all such employees or assistants shall be covered by the bond of the registered preparer.].

(c) The registered preparer shall file an amendment to the bond within 30 days of a change in information contained in the bond [, including a change in the employees or assistants of the registered preparer].

(d) A registered preparer may not conduct business without having the bond in the amount prescribed by this section.

(e) Thirty days prior to the cancellation or termination of any bond required by this section, the issuer of the bond shall send a written notice of that cancellation or termination to the registered preparer and the Board, identifying the bond and the date of cancellation or termination.

(f) If a registered preparer fails to obtain a new bond by the effective date of the cancellation or termination of the former bond, the registered preparer shall cease to conduct business until a new bond is obtained.

Commentary

This section requires each registered preparer to post a bond in the amount of \$10,000 that can be used to pay damages and penalties to consumers harmed by any violations of the Act. There is also optional language if the state opts to exempt employees and assistants of registered preparers in Section 3, so that the bond also applies to any misconduct by these individuals.

This bond requirement is based on California's law, which has a similar bond requirement. To prevent dilution of the bond requirement by inflation, this section requires that the bond requirement be increased every five years based on the Consumer Price Index.

The bond is important because it provides a source of compensation to consumers harmed by violations of the Act, such as fraud by the registered preparer that results in penalties imposed on the consumer.

Without this protection, registered preparers could shut down their businesses and leave nothing from which a consumer could satisfy a judgment obtained due to the illegal acts of the preparer.

Section 9. Continuing Education

(a) Every registered preparer shall complete at least 15 hours of continuing education every year. Two (2) hours of continuing education must specifically address the topic of professional conduct.

(b) The Board shall adopt regulations to implement the continuing education requirements of subsection (a). These regulations shall:

- (1) establish minimum requirements for continuing education providers to ensure they include information about changes in tax law, regulation, procedure, as well as the current trends in federal and state tax preparation services;
- (2) ensure that programs approved for compliance with the continuing education requirements are available at reasonable intervals throughout the state; and
- (3) provide registered preparers with options by which to obtaining continuing education through a variety of programs, which may include:
 - (i) professional development programs;
 - (ii) technical sessions of professional societies or chapters;
 - (iii) college courses approved by the Board;
 - (iv) seminars provided by governmental units, including the Board; and
 - (v) other seminars or symposiums related to tax preparation services.

(c) The Board may enter into written agreements with qualified education providers wishing to conduct approved programs. A person seeking approval by the Board for this purpose shall:

- (1) submit to the Board an application on the form that the Board provides; and
- (2) pay an application fee, as set by the Board.

(f) A registered preparer may obtain qualifying hours to fulfill the requirements of subsection (a) from a qualified continuing education provider registered with the Internal Revenue Service.

Commentary

The Model Act requires that registered preparers take continuing education courses so that they stay current with changes in federal and state tax law. Both the IRS regulation and the Maryland and Oregon laws include a provision for continuing education, and this section of the Model Act is based on a combination of them.

The 15 hour requirement is based on the IRS regulations. However, this Section adds a requirement, similar to that required by many state bar agencies, that 2 hours of the 15 specifically focus on ethics or professional conduct issues.

This section requires the Board to issue regulations that result in registered preparers having sufficient options to meet the continuing education requirements. These provisions are based on Maryland's law. This section also provides that any continuing education hours obtained from an education provider registered with the IRS shall be counted toward the state continuing education requirements.

Section 10. Renewal of registration

(a) At least one (1) month before a registration expires, the Board shall mail to the individual, at the last known address of the individual:

- (1) a renewal application form, as established by the Board; and
- (2) a notice that states: (i) the date on which the current registration expires; and (ii) the date by which the Board must receive the renewal application for the renewal to be issued and mailed before the registration expires; and (iii) the amount of the renewal fee.

(b) A registered preparer may renew a registration for an additional 2-year term if the individual is entitled to be registered and, before the date established in subsection (a)(2)(ii):

- (1) pays to the Board a renewal fee, as set by the Board;
- (2) submits to the Board a renewal application which has been deemed satisfactorily completed by the Board; and
- (3) submits to the Board evidence deemed satisfactory to the Board of compliance with the continuing education requirements set forth in Section 9 and the bond requirements of Section 8.

(c) The Board may restore any lapsed registration upon payment to the Board of all past unpaid renewal fees and a fee for restoration of a lapsed registration as set by the Board pursuant to Section 4 and upon proof of compliance with the continuing education requirements set forth in Section 9 and the bond requirements of Section 8.

Commentary

This section provides for renewal of licenses. It is based on a combination of the Maryland and Oregon laws. It places the burden on the Board to notify registered preparers when they need to renew, and in turn requires the preparers to complete the renewal application satisfactorily and to demonstrate that they have complied with the continuing education and bond requirements of the Act.

There is a provision for restoration of lapsed licenses, which requires proof of compliance with the requirements for renewal and fees for both unpaid renewals and for restoration. It is based in large part on a provision in Oregon's law.

SUBTITLE 4. DISCLOSURES; PROHIBITIONS

Section 11. **Disclosures**

Prior to providing any individual tax preparation services, a registered preparer must provide the consumer with the following:

(a) A written disclosure consisting of:

- (1) the registered preparer's name, address, telephone number, and PTIN from the IRS;
- (2) that the registered preparer is not a certified public accountant, an enrolled agent, or a tax attorney;
- (3) a list or description of the services that the registered preparer is qualified to provide; and
- (4) the registered preparer's education and training, including examinations taken and successfully passed.

(b) A written disclosure of fees for individual tax preparation services that contains the following information:

- (1) a list of, description of, and the fee for each tax preparation service offered by the tax preparer, including fees for the preparation of individual forms;
- (2) a list of, description of, and price of all miscellaneous fees associated with registered preparer's tax preparation services, including filing fees and processing fees; and
- (3) an estimate of the total charge to the consumer based upon the tax preparation services the consumer has selected to purchase.

The disclosure required by this subsection shall be in the form of a table, as prescribed by the Board by regulation, and which shall contain clear and concise information regarding each item required to be disclosed along with appropriate headings for each such item.

(c) The Board shall develop and publish a Model Disclosure Form to implement the requirements of subsection (b). A registered preparer must make the disclosures required by subsection (b) using a format substantially similar to the Model Disclosure Form.

(d) The Board may by regulation require such additional disclosures as it believes are necessary or proper to effectuate the purposes of this Act.

(e) The registered preparer must orally review the disclosure required by subsection (b)(3) with the consumer before the preparer renders any individual tax preparation services to the consumer. No individual tax preparation services shall be rendered to any consumer until the registered preparer has reviewed this information.

Commentary

This section mandates the required disclosures that a registered preparer must make to consumers before providing individual tax preparation services. The first subsection involves disclosures about the registered preparer and is based on Maryland’s law. The second subsection requires disclosures of tax preparation fees, and is partly based on an ordinance issued by the City of Chicago. This requirement addresses the serious problem discussed in Section E of the accompanying report concerning the lack of transparency around tax preparation fees.

This section modifies the requirements of the City of Chicago’s ordinance by requiring that the disclosures be in the form of a tabular format. This is an idea derived from the Truth in Lending Act’s requirement for a table to accompany credit card applications, sometimes known as the “Schumer Box” after its lead sponsor in the House of Representatives. A sample of a table format would be:

Figure 2	
Proposed tax preparation fee box	
Service	Cost (examples)
1040 EZ return	--
Basic 1040 return	\$150.00
• Schedule A (itemized deductions)	--
• Schedule B (interest and dividends)	--
• Schedule C-EZ (self-employment)	--
• Schedule C (self-employment)	--
• Schedule EIC (earned income credit)	\$50.00
• Other Schedules (list as needed)	--
State return	\$50.00
Local return	\$25.00
Total preparation fees	\$275.00
Processing fees	
• Document storage and copying	\$25.00

Filing fees	
• Electronic filing and acknowledgement	\$30.00
• Paper filing	--
Additional fees	
• Tax refund loan	--
• Tax refund check	\$30.00
• Audit protection	\$25.00
• Return review	--
• Tax planning and research	--
• Third party fees from bank or servicer	--
Total fees	\$110.00
Refund options	
• Direct deposit to a bank account	--
• Split refund (Form 8888)	--
• U.S. Savings Bond	--
Total Preparation Cost	\$385.00
<i>Questions? Call xxx-xxx-xxxx</i>	

Taken from: David Rothstein, Policy Matters Ohio, Improving Tax Preparation With a Model Fee Disclosure Box, June 2013

Section 12. Prohibited Acts

(a) Unless the person has obtained a registration from the Board and otherwise complied with the provisions of this Act, no person (including any officer, agent, employee or representative) may individually or in conjunction or cooperation with another person:

- (1) provide, or attempt to provide, individual tax preparation services; or
- (2) represent to the public, by use of a title, including "registered individual tax preparer" or "individual tax preparer," by description of services, methods, or procedures, or otherwise, that the individual is authorized to provide individual tax preparation services in the state.

(b) No registered preparer [(including any employee or assistant)] may, individually or in cooperation, with another person:

- (1) make, or authorize the making of, any statement or representation, oral or written or recorded by any means, which is intended to induce persons to use individual tax preparation services, which statement or representation is fraudulent, untrue, or misleading;
- (2) obtain the signature of a consumer to a tax return or authorizing document which contains blank spaces to be filled in after it has been signed;
- (3) fail or refuse to give a consumer, for his or her own records, a copy of any document requiring the consumer's signature, immediately after the consumer signs the document, or if individual tax preparation services are provided by internet or mail, by sending a copy by electronic means or postal mail that same day;
- (4) fail to maintain a copy of any tax return prepared for a customer for four years from the date of completion or the due date of the return, whichever is later;
- (5) engage in advertising practices which are fraudulent, untrue, or misleading;
- (6) violate Section 7216 of Title 26 of the United States Code or its implementing regulations, or counsel or assist another to do so;
- (7) violate the [state tax code] or its implementing regulations, or counsel or assist another to do so;
- (8) fail to sign a consumer's tax return when the consumer has made payment to the tax preparer for individual tax preparation services;
- (9) fail to return, upon the demand by or on behalf of a consumer, records or other data provided to the tax preparer by the consumer;
- (10) knowingly give false or misleading information to the consumer or the Board;
- (11) violate this Act; or
- (12) engage in any other action prohibited by the code of professional conduct or other regulations promulgated by the Board.

(c) Each violation of this section constitutes a separate offense.

(d) Any waiver by a consumer of any provision of this Act shall be deemed null, void and of no effect.

Commentary

This section lists what acts are prohibited for both registered preparers and preparers who fail to obtain a registration. It is primarily based on a combination of the California and Oregon laws.

The list of prohibited acts in this section is crucial to protecting consumers from abusive behavior. The most important prohibited act is subsection (a), which prohibits individuals from providing or attempting to provide individual tax preparation services without a registration. This is a prohibition in all of the state laws, as well the IRS regulations.

Several other protections are critical, including the prohibitions against:

- *Inducing consumers to sign tax forms containing blank spaces;*
- *Failing or refusing to give a consumer a copy of his or her tax return or other document requiring his or her signature;*
- *Violating the Act or any regulations issued under the Act.*

Finally, this section prohibits any waiver of any of the Act's protections, and deems it to be null and void.

SUBTITLE 5. ENFORCEMENT

Section 13. **Denial or suspension of registration**

(a) The Board may deny a registration to any applicant, reprimand any registered preparer, or suspend or revoke a registration if it finds that the applicant or registered preparer:

- (1) fraudulently or deceptively obtains or attempts to obtain a registration for the applicant or registered preparer or for another;
- (2) fraudulently or deceptively uses or allows another to use a registration;
- (3) under the laws of the United States or of any state, is convicted of a felony or a misdemeanor, either of which is directly related to the provision of individual tax preparation services or is related to tax laws;
- (4) is guilty of negligence, incompetence, deception, or misconduct while providing individual tax preparation services;
- (5) violates any regulation adopted under this Act; or
- (6) violates any provision of this Act.

(b) In addition to reprimanding or suspending or revoking a registration under this subsection, the Board may impose a penalty not exceeding \$5,000 for each violation. To determine the amount of the penalty imposed under this subsection, the Board shall consider:

- (1) the seriousness of the violation;
- (2) the harm caused by the violation;
- (3) the good faith of the registered preparer; and
- (4) any history of previous violations by the registered preparer.

(c) The Board shall use any penalty collected under subsection (b) to provide for the enforcement of this section or administration of this Act.

(d) The Board shall give the individual against whom action is contemplated under subsection (a) an opportunity for a hearing before the Board. For any such hearing, the Board may make investigations, subpoena witnesses, and require audits and reports, and shall make findings of fact and conclusions of law. All such hearings shall be open to the public.

(e) Complaint Process. The Board shall establish a complaint process whereby an aggrieved consumer or any member of the public may file a complaint against a registered preparer for any of the acts listed in subsection (a). All complaints shall be considered public records pursuant to [cite for state public records law] with the exception of the complainant's name, address, or other personal identifying information. The Board shall create a toll-free telephone number and an Internet page whereby consumers may obtain complaint forms and information about registered preparers, including information about complaints filed against them.

The Board may hold a hearing upon the request of a party to the complaint. The Board may after such hearing suspend or revoke a registration as provided in subsection (a) or impose a penalty as provided in subsection (b).

(f) No revocation, suspension, or surrender of any registration shall relieve the registered preparers from any civil or criminal liability.

Commentary

This section gives the Board the power to deny, suspend or revoke a preparer's registration based on certain violations. These include fraud or deception concerning registration, criminal convictions related to tax preparation or tax law, violations of the Act or its regulations, or incompetence or misconduct involving individual tax preparation. This section also gives the Board the authority to impose civil penalties for such violations. It is primarily based on Maryland's law, which has very similar provisions.

This section also requires the Board to establish a complaint process for consumers. The complainant or the registered preparer may seek a hearing on the complaint. This section gives the public the right of access to all complaints against registered preparers, except for the personal identifying information of complainants.

Section 14. Cease and Desist Orders Against Unregistered Preparers.

(a) Whenever the Board believes or has notice that any individual is engaged in providing individual tax preparation services without a registration, the Board shall give reasonable notice to the individual, and an opportunity for the individual to be heard. If, following the hearing, the Board finds that the individual has engaged in providing individual tax preparer services without a registration, the Board shall order the preparer to cease and desist from the action.

(b) If the individual continues to engage in an action in violation of the Board order to cease and desist from the action, the individual shall be required to disgorge any fees paid by consumers for individual tax preparation serves, and shall be subject to a penalty of five thousand dollars (\$5,000) for each action it takes in violation of the Board's order.

(c) For any hearings pursuant to this section, the Board may make investigations, subpoena witnesses, and require audits and reports, in preparation for such hearings, and shall make findings of fact and conclusions of law. All such hearings shall be open to the public.

Commentary

This section gives the Board the power to impose penalties against unregistered preparers. One problem that sometimes arises in state licensing schemes is the inability of the licensing agency to impose sanctions on an unlicensed practitioner. This section is intended to avoid that problem by giving the Board authority to take enforcement action against unregistered preparers.

This section provides that a single violation will result in a cease and desist order. Continuing violations will result in a civil penalty.

Section 15. Private Right of Action

(a) The remedies provided herein are cumulative and apply to (1) registered preparers; and (2) unregistered preparers to whom this Act applies and who fail to register.

(b) Any violation by a registered preparer of any state law prohibiting unfair or deceptive acts or practices constitutes a violation of this Act.

(c) Any violation of this Act constitutes a violation of any state law prohibiting unfair or deceptive acts or practices.

(d) Damages. A registered preparer who fails to comply with any provision of this Act is liable to the consumer for: (i) actual and consequential damages; (ii) statutory damages of \$2,500 (to be increased every five years based proportionally on changes in the Consumer Price Index, with fractional amounts rounded to the nearest dollar) or three times the amount of the fee for tax preparation services, whichever is greater; and (iii) reasonable attorney's fees and costs.

(e) Any consumer may sue for injunctive or other appropriate equitable relief to enforce this Act.

(f) Any consumer may bring a class action suit to enforce this Act. In any such class action, a registered preparer who fails to comply with any provision of this Act is liable for: (i) actual and consequential damages for each class member; (ii) statutory damages as set forth in subsection (d)(ii) for each class member; and (iii) reasonable attorney's fees and costs.

(g) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer nor must the consumer exhaust any administrative remedies provided under this Act or any other applicable law.

(h) No written contract for individual tax preparation services shall contain a provision that, prior to a dispute arising, waives or has the practical effect of waiving the rights of a party to that contract to resolve that dispute by obtaining:

- (1) Injunctive, declaratory, or other equitable relief;
- (2) Relief on a class-wide basis;
- (3) Punitive damages;
- (4) Multiple or minimum damages as specified by statute;
- (5) Attorney's fees and costs as specified by statute or as available at common law; or
- (6) A hearing at which that party can present evidence in person.

Any provision in a written contract violating this subsection shall be void and unenforceable. A court may refuse to enforce other provisions of the contract as equity may require.

Commentary

The private right of action gives consumers the ability to enforce the provisions of the Act, allowing them to directly sue tax preparers, both registered and unregistered, for violations. By making violation of the Act also a violation of any state law prohibiting unfair or deceptive acts or practices, it also likely gives enforcement authority to the state Attorney General.

A private right of action is essential to ensuring that the Act has a meaningful impact. Enforcement through the complaint process alone is sometimes inadequate, given the fact that many agencies do not have sufficient resources to investigate all violations and undertake enforcement actions. This is especially true given the proliferation of fringe preparers, some of whom prey on language minorities or isolated communities.

This section permits consumers to seek actual and consequential damages, including costs and attorney's fees. It also imposes a statutory penalty of \$2,500 per violation, or three times the tax preparation fee, whichever is greater. The statutory penalty is important because the actual damages in these cases could be small in some cases, and alone might not deter a business from violating this Act. The statutory penalty is indexed to the Consumer Price Index to prevent its deterrent effect from being eroded by inflation. Statutory penalties of this type are common in state and federal consumer protection acts.

This section includes injunctive relief as another method of discouraging violations by businesses that may not be deterred by damage awards alone. For the same reason, and to assist groups of consumers who have been injured by violation, this section includes a provision allowing for class actions.

The final provision of this section prevents waiver of certain individual rights whose preservation is important for the operation of the justice system, whether the dispute is resolved in court, in arbitration, or otherwise.

SUBTITLE 5. SEVERABILITY

Section 16: **Severability**

If any portion of this Act is determined to be invalid for any reason by a final nonappealable order of any court of this state or of a federal court of competent jurisdiction, then it shall be severed from this Act. All other provisions of this Act shall remain in full force and effect.

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