



California Society of Tax Consultants

Assemblyman Mark Stone
Chairman, Business & Professions Committee

Dear Assemblyman Stone and members of the Business and Professions Committee,

As the President of the California Society of Tax Consultants (CSTC), I am writing on behalf of the more than 800 members of the organization who strongly oppose the introduction of AB1140 and request its withdrawal. AB1140 fails to acknowledge regulations currently in place to regulate tax professionals in California. Additionally, AB1140 displays a lack of awareness of both the tax preparation process as well as the application of tax law, specifically with respect to the California Earned Income Credit (CEITC).

CSTC Advocated for the Formation of CTEC

CSTC has been committed to the ethical role tax professionals play in the execution of the tax preparation process in California. In fact, CSTC (originally named the Inland Society of Tax Consultants) was formed to address the issue of tax return preparers who were taking compensation for preparing tax returns but failing to sign the returns they prepared. We sought regulation to end the practice.

As a result of our members' efforts, legislation was passed resulting in the creation of the California Tax Education Council, commonly referred to as CTEC. Several CSTC members serve on the CTEC Board and continue to lead the way in ensuring that tax professionals are meeting their responsibility of treating taxpayers ethically and with the highest integrity in professional standards.

CSTC members include CPAs, Enrolled Agents, CTEC preparers and attorneys, and collectively we serve a leadership role in educating and raising the level of professionalism of tax professionals in California.

Tax Professionals are Currently Subject to Stringent Requirements

Tax professionals preparing tax returns in California are subject to multiple layers of regulation, depending upon who issues the preparer's credential.

To accept compensation for preparing a tax return in California, the preparer must provide proof of licensure as a CPA or Attorney, admitted to practice before the IRS as an Enrolled Agent or be a Registered Preparer with the California Tax Education Council.

California is currently a leader in the regulation of tax professionals and is one of only four states in the country that requires licensure or registration to provide tax services for compensation. California's existing Tax Preparers Act is intended to assist in policing the unscrupulous. The Act,

Business and Professions Code 22250-22259, regulates tax preparers by addressing tax preparer ethics, professional conduct, and imposes penalties for violating the Act's provisions.

Code Section 22251-1 of The Tax Preparers Act addresses unscrupulous behavior of tax professionals as follows:

22251.1. *It is the intent of this chapter to enable consumers to easily identify credible tax preparers who are bonded and registered, to ensure tax preparers receive adequate education and treat confidential information appropriately, **to prohibit tax preparers from making fraudulent, untrue, or misleading representations**, and to provide for a self-funded nonprofit oversight body to register tax preparers and ensure that they meet all of the requirements of this chapter.*

The Franchise Tax Board Already Regulates California's Earned Income Tax Credit

The Franchise Tax Board places stringent due diligence requirements upon tax return preparers when a return includes the California Earned Income Tax Credit:

Paid preparers of **California** income tax returns or claims for refund involving the **California earned income tax credit (EITC)** must meet **due diligence** requirements in determining the taxpayer's eligibility for, and the amount of, the **EITC**. Failure to **do** so could result in a \$500 penalty for each failure.

The proposed AB 1140 will penalize the consumer by putting additional regulations on the tax professional community, the cost of which will be passed on to the consumer whom you intend to protect.

Taxpayers Do Not Apply for California's Earned Income Tax Credit

Section 2252.2 of the Bill assumes the taxpayer applies for the California Earned Income Tax Credit (CEITC). For the record, **taxpayers do not apply for the CEITC**. The credit is available for taxpayers who qualify based upon income and family size limitations.

Whether a taxpayer qualifies for the automatic credit isn't known until the tax return has been prepared. A number of factors can affect the qualification to claim the credit, which are not easily identifiable when first meeting the taxpayer client. For example, a taxpayer may have W-2 wages that by initial observation would disqualify the taxpayer from claiming the credit. But if the taxpayer operates a separate business with poor operating results, the netting of the losses from the business could ultimately reduce the taxpayer's income to the point where the taxpayer would qualify for the credit. This can't be known until the entire tax preparation process is completed.

Commentary on Specific Provisions of AB 1140 (Commentary in italics below)

SECTION 1.

Section 22252.2 is added to the Business and Professions Code, to read:

22252.2.

(a) Before preparing a tax return for a client who is applying for the California Earned Income Tax Credit, a tax preparer shall provide a written disclosure to the client that contains all of the following information:

(1) The total amount of all fees being charged by the tax preparer.

It is unclear as to how this sentence should be interpreted. Is this a price list, a total for this particular client's return, or the tax preparer's total fees charged to all of his customers for the year? If considered to be an absolute price, we believe this would be a state-imposed price fixing and lacking constitutional authority.

(2) An estimate of the amount of the tax refund the client would receive without paying the tax preparer's fees.

The estimated amount of the tax refund is again a subjective statement. Is this intended to be an estimate of the CA EITC refund or the entire refund? Also, not all CEITC qualified returns result in refunds.

Until a preparer has all of the information necessary to prepare a return and has done most of the work of interviewing the client and inputting data, it is unreasonable to give any estimate of a refund. Also, if the taxpayer has prior California tax debt, they would not "receive" the refund.

We would like to make it clear that it is illegal for a tax preparer to deduct their fee from the refund. Bank fees may be deducted. If the goal of this legislation is to regulate bank fees related to the refund, this legislation does nothing to address this issue.

(3) A statement that the client may be eligible for free tax preparation services through the Internal Revenue Service Volunteer Income Tax Assistance program, and the Internal Revenue Service's internet website where the client may find additional information.

Although the IRS offers free services for federal tax preparation, the proposed regulation does not acknowledge the availability of free tax preparation assistance offered by California's Franchise Tax Board for California taxpayers. This statement does nothing to address the concerns of the California taxpayer who is the consumer you are proposing to protect with these regulations.

The IRS, in partnership with AARP and other agencies, regularly advertises its free tax preparation services through public service announcements and other promotions. Those who need this service are keenly aware of their availability. These tend not to be the type of taxpayers who use a paid tax preparer. Starting a tax engagement by informing the client they can get the work done for free is at best insulting to the client and embarrassing to the tax professional. The end comment is, the State made me do it.

Please keep in mind that VITA and other services are extremely limited in scope. These services will deny providing its services to returns involving tax matters beyond the most basic of tax preparation needs. The one-size-fits all assumption fails to recognize that taxpayers have complex issues that go far beyond the services offered for free.

(b) The disclosures required by this section shall be on a single sheet of paper and written in not less than 20-point type and shall be signed and dated by the client. The tax preparer shall retain the document for at least 3 years.

(c) The written disclosures required to be provided in this section shall be made available in English and the five languages listed in Section 1632 of the Civil Code.

Additional regulations that require time, printing, storage costs, and language interpretation are costs that will be passed to the consumer. This is particularly unfair to the consumer who qualifies for the CA EITC.

The language requirements in the bill results in a forced misrepresentation of services by tax professionals. By being required to offer a disclosure in a language not spoken in a tax professional's practice could easily mislead that the tax professional can offer services in a language not spoke in the tax practice. This bill creates forced deceptive trade practices.

Conclusion

The most salient question we ask, as an organization, is this: ***What is the primary purpose of this legislation?*** If the goal is to stop perceived abusive practices, who are the persons considered to be delivering these abusive practices?

In our opinion, it is the persons preparing tax returns for compensation but who fail to sign them. This legislation does nothing to address this issue. We believe the better approach is to enforce the laws and regulations currently in place.

With this in mind, we reiterate our position that the Business and Professions Committee respectfully withdraw AB1140 and its overreaching provisions from further consideration.

Respectfully,



Gary Quackenbush, President