

**BEFORE THE MARYLAND STATE BOARD OF INDIVIDUAL TAX PREPARERS**

MARYLAND STATE BOARD OF INDIVIDUAL \*  
TAX PREPARERS, \*

v. \*

Case no. MITP-16-0034

Douglas E. Brown, \*

Respondent. \*

\* \* \* \* \*

**FINAL ORDER**

**I. Procedural Background.**

The above-captioned matter was heard before the Maryland State Board of Individual Tax Preparers ("the Board") on August 8, 2016. The allegations against Respondent Douglas E. Brown, as set forth in the Board's charge letter dated June 13, 2016, were as follows:

You have never been registered with the Board to provide services as an individual tax preparer in Maryland. On or about February 8, 2016, a complaint was filed with the Board by the Maryland Office of the Comptroller ("Comptroller") stating that it had suspended electronic filing privileges for you and multiple other tax preparers in the State due to suspicions regarding the propriety of filed returns. The Comptroller's complain further advised that, as a professional tax preparer, you began filing Maryland individual tax returns for 2015 on behalf of taxpayers on or about January 12, 2016.

Upon receipt of the Comptroller's complaint and a subsequent Board investigation, it was determined that you provided individual tax preparation services to Maryland taxpayers during 2016 while not registered by the Board. From January 12, 2016, through February 2, 2016, you filed at least 96 Maryland individual tax returns (Form 502) for the 2015 tax year. You also filed numerous Maryland individual tax returns during 2015 for the 2014 tax year. At the times of filing of these returns, you were not registered by the Board to provide individual tax preparation services in Maryland, and thereby, you were in violation of the Maryland Individual Tax Preparers Act, Title 21-Business Occupations and Professions Article ("BOP"), Annotated

Code of Maryland.

Based on the above described circumstances, you are charged with violating the following laws of the State of Maryland and provisions of the Code of Maryland Regulations (COMAR):

**Business Occupations and Professions Article, Ann. Code of Maryland**

**Section 21-301. Registration required**

An individual shall be registered by the Board before the individual may provide individual tax preparation services in the State.

**Section 21-401. Practice without registration prohibited.**

Except as otherwise provided in this title, a person may not provide, attempt to provide, or offer to provide individual tax preparation services in the State unless registered by the Board.

In its charge letter, the Board informed Mr. Brown of his right to a hearing on the charges, in accordance with the Business Occupations and Professions Article ("BOP") of the *Annotated Code of Maryland*, §21-312 *et seq.*, the Maryland Administrative Procedure Act as set forth in the State Government Article of the *Annotated Code of Maryland*, Title 10, Subtitle 2, and the Board's hearing rules set forth at COMAR 09.01.02. Mr. Brown was also informed that should the charges be proven, pursuant to BOP § 21-405(a), he would be subject to a possible reprimand, suspension or revocation of her registration, and/or the imposition of a penalty not to exceed \$5,000.00 per violation. At the August 8, 2016, hearing, Mr. Brown appeared without counsel. Kris King, Assistant Attorney General, presented evidence to the Board in support of the allegations.

## **II. Findings of Fact.**

The Board includes in its factual findings the facts set forth in the procedural background of the matter. In addition, after examining all of the evidence, including both the testimony of witnesses and the documentary evidence submitted at the hearing, and having assessed the demeanor and credibility of those offering testimony, the Board makes the following additional findings of fact:

1) Mr. Brown is not a Certified Public Accountant, an attorney, an enrolled agent or otherwise exempt from the requirements of the Maryland Individual Tax Preparers Act pursuant to BOP § 21-102(b).

1) As of the date of the hearing in this matter, Mr. Brown had not submitted an application for registration with the Board as an individual tax preparer.

2) As of the date of the hearing in this matter, Mr. Brown had neither completed the Maryland Registered Tax Preparer Examination and nor had applied for and received a waiver of the examination requirement pursuant to COMAR 09.38.01.02D.

3) Mr. Brown has been preparing taxes for clients by his own estimation since 1980. Mr. Brown owns and operates D.E. Brown & Associates, Inc., located at 36 B East 25th St., Baltimore, MD 21218, and offers and provides individual tax preparation services out of this office. Mr. Brown charges \$90.00 to prepare a short form tax return, and from \$200.00 to \$400.00 for self-employed clients depending on the complexity of the return.

4) According to information provided by the Comptroller, Mr. Brown prepared 96 Maryland individual tax returns for the 2015 tax year. Mr. Brown's own estimates ranged

from 200 to 1000 returns.

5) Mr. Brown's nephew, Dante Hicks, works with him preparing tax returns. Mr. Hicks is not registered with the Board. Prior to obtaining his own Preparer Tax Identification Number ("PTIN") in January of 2016, Mr. Brown would use Mr. Hicks' PTIN when preparing tax returns.

6) Mr. Brown uses Drake Software to prepare tax returns for his clients and indicated that he completed continuing education courses provided through Drake Software.

7) Mr. Brown indicated that he was told by an unnamed individual that he would be "grandfathered" in as a registered individual tax preparer because he had 25 years of experience. Mr. Brown never contacted the Board to determine if this was in fact the case.

### **III. Evaluation of the Evidence.**

The Board believes that the charges in this case are supported. At the hearing in this matter, the evidence demonstrated that Mr. Brown provided individual tax preparation services, as defined in BOP § 21-101(f), without a registration issued by the Board and that Mr. Brown is not exempt from the registration requirement pursuant to BOP § 21-102(b). Furthermore, although Mr. Brown indicated he believed that his experience allowed him to be "grandfathered" in, there is no such provision in the law. BOP § 21-304 does allow individuals with certain experience and continuing education to waive the examination requirement, but not the registration requirement. Additionally, COMAR 09.38.01.02D requires that an individual must apply for and be granted the waiver by the Board after a

review of the application.

Accordingly, the sole remaining issue before the Board is what, if any, sanction it must impose against Mr. Brown under these circumstances. The Board has the authority under BOP § 21-405 (a) to impose a penalty not exceeding \$5,000.00 per violation. In evaluating whether or not to impose a civil monetary penalty, BOP § 21-405(a) provides that the Board shall consider the following factors: 1) the seriousness of the violation; 2) the harm caused by the violation; 3) the good faith of the violator; 4) any history of previous violations by the violator.

With respect to the seriousness of and harm caused by the violation, Mr. Brown ignored the fundamental obligation of any non-exempt individual who provides individual tax preparation services in Maryland: being registered with the Board. Mr. Brown essentially took opportunities away from individuals who have complied with the registration requirement.

With respect to good faith on the part of Mr. Brown, he did appear at the hearing and essentially did not dispute the facts contained in the Board's charge letter. However, the Board was troubled by Mr. Brown's apparent unwillingness to take proactive steps to remedy his lack of registration prior to the hearing. Under the circumstances, the Board believes that a civil penalty is warranted. While the statute allows the Board to impose a civil penalty of up to \$5,000.00 per violation, the Board believes that a penalty of \$250.00 per violation is warranted in this case, in light of the amount of money Mr. Brown earned for each tax return he prepared while unregistered. As for the number of violations in this

case, in spite of the fact that Mr. Brown's own testimony concerning the number of tax returns he completed as an unregistered preparer during the 2015 tax year varied from 200 to 1000 returns, the Board is using the figure contained in the charge letter based on the information provided by the Comptroller, that is, 96. Accordingly, the Board will impose a total monetary penalty of \$24,000.00.

### **CONCLUSIONS OF LAW**

Based on the Findings of Fact, and using the specialized knowledge, training, and experience of its members, the Maryland State Board of Individual Tax Preparers hereby concludes as a matter of law that the Respondent Douglas E. Brown violated Business Occupations and Professions Article, Ann. Code of Maryland, Sections 21-301 and 21-401.

### **ORDER**

In consideration of the Maryland State Board of Individual Tax Preparer's Findings of Fact and Conclusions of Law in this matter, it is this 29<sup>th</sup> day of September, 2016

#### **ORDERED:**

1) That Douglas E. Brown pay to the Board, within 30 days of the date of this order, a total civil monetary penalty in the amount of \$24,000.00 for his 96 violations of Business Occupations and Professions Article, Ann. Code of Maryland, Sections 21-301 and 21-401;

3) That these sanctions are effective thirty (30) days from the date of this order unless the Respondent obtains a judicial stay of enforcement pursuant to Md. State Gov. Code Ann., § 10-226; and

4) That the records, files, and documents of the Maryland State Board of Individual Tax Preparers reflect this decision.

**MARYLAND STATE BOARD OF  
INDIVIDUAL TAX PREPARERS**

**SIGNATURE ON FILE**

By:

Fredric Bader  
Chair