

2018 Regular Session

SENATE BILL NO. 238

BY SENATOR MORRELL

REVENUE DEPARTMENT. Authorizes the Department of Revenue to seek to enjoin tax preparers who engage in certain conduct. (gov sig)

1 AN ACT  
2 To enact R.S. 47:1574.2, relative to tax administration; to authorize the secretary of revenue  
3 to bring suit to enjoin tax preparers who engage in certain conduct; to provide a list  
4 of the conduct that may be enjoined; to authorize the enjoining of tax preparers who  
5 repeatedly engage in prohibited conduct from preparing tax returns for this state; to  
6 provide for definitions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 47:1574.2 is hereby enacted to read as follows:

9 **§1574.2. Suit to enjoin certain tax preparers**

10 **A. In a court of competent jurisdiction, the secretary may commence suit**  
11 **to enjoin any tax preparer from further engaging in any conduct described in**  
12 **Subsection B of this Section or from further action as a tax preparer.**

13 **B. In any action under Subsection A of this Section, the court may enjoin**  
14 **the tax preparer from further engaging in any conduct specified in this**  
15 **Subsection if the court finds that injunctive relief is appropriate to prevent the**  
16 **recurrence of this conduct. The court may enjoin conduct when a tax preparer**  
17 **has done any of the following:**

1           (1) Prepared any return or claim for refund that includes an  
2           understatement of a taxpayer's liability due to an unreasonable position. For  
3           purposes of this Subsection, "unreasonable position" shall have the same  
4           meaning as provided by Section 6694 of the Internal Revenue Code.

5           (2) Prepared any return or claim for refund that includes an  
6           understatement of a taxpayer's liability due to willful or reckless conduct. For  
7           purposes of this Subsection, "willful or reckless conduct" shall have the same  
8           meaning as provided by Section 6694 of the Internal Revenue Code.

9           (3) Where required, failed to furnish copy of return or claim for refund.

10          (4) Where required, failed to sign return or claim for refund.

11          (5) Where required, failed to furnish identifying number.

12          (6) Where required, failed to retain copy of records.

13          (7) Where required, failed to file correct information returns.

14          (8) Where required, failed to be diligent in determining eligibility for tax  
15          benefits.

16          (9) Negotiated a check issued to a taxpayer by the Department of  
17          Revenue without the permission of the taxpayer.

18          (10) Engaged in any conduct subject to any criminal penalty provided in  
19          Title 47 of the Louisiana Revised Statutes of 1950.

20          (11) Misrepresented the tax preparer's eligibility to practice before the  
21          Department of Revenue or otherwise misrepresented the tax preparer's  
22          experience or education.

23          (12) Guaranteed the payment of any tax refund or the allowance of any  
24          tax credit.

25          (13) Engaged in any other fraudulent or deceptive conduct that  
26          substantially interferes with the proper administration of the tax laws of the  
27          state of Louisiana.

28          C.(1) If the court finds that a tax preparer has continually or repeatedly  
29          engaged in any conduct described in Subsection B of this Section and that an

1 injunction prohibiting the conduct would not be sufficient to prevent the  
 2 person's interference with the proper administration of the tax laws of  
 3 Louisiana, the court may enjoin the person from acting as a tax preparer in the  
 4 state of Louisiana.

5 (2) The fact that the person has been enjoined from preparing tax  
 6 returns or claims for refund for the United States or any other state, in the five  
 7 years preceding the petition for an injunction shall establish a prima facie case  
 8 for an injunction to be issued pursuant to this Section. For purposes of this  
 9 Section, "state" shall mean a state of the United States, the District of  
 10 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or  
 11 insular possession subject to the jurisdiction of the United States.

12 D. The term "tax preparer" means any person who prepares for  
 13 compensation, or who employs one or more persons to prepare for  
 14 compensation, any return for taxes imposed by this Subtitle or any claim for  
 15 refund of taxes imposed by this Subtitle. The preparation of a substantial  
 16 portion of a tax return or claim for refund shall be treated as if it were the  
 17 preparation of the return or claim for refund.

18 Section 2. This Act shall become effective upon signature by the governor or, if not  
 19 signed by the governor, upon expiration of the time for bills to become law without signature  
 20 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
 21 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
 22 effective on the day following such approval.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Leonore Heavey.

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DIGEST

SB 238 Original 2018 Regular Session Morrell

Proposed law authorizes the secretary of revenue to file suit to enjoin a tax preparer from further engaging in any prohibited conduct.

Proposed law provides a list of prohibited conduct for tax preparers.

- (1) Preparation of any return or claim for refund that includes an understatement of a taxpayer's liability due to an unreasonable position.

- (2) Preparation of any return or claim for refund that includes an understatement of a taxpayer's liability due to willful or reckless conduct.
- (3) Failure to furnish copy of return or claim for refund, where required.
- (4) Failure to sign return or claim for refund, where required.
- (5) Failure to furnish an identifying number, where required.
- (6) Failure to retain copies of records, where required.
- (7) Failure to file correct information returns, where required.
- (8) Failure to be diligent in determining eligibility for tax benefits, where required.
- (9) Negotiation of a check issued to a taxpayer by the Department of Revenue without the permission of the taxpayer.
- (10) Engagement in any conduct subject to any criminal penalty provided by Title 47 of the Louisiana Revised Statutes of 1950.
- (11) Misrepresentation of the tax preparer's eligibility to practice before the Department of Revenue or otherwise misrepresented the tax preparer's experience or education.
- (12) Guaranteeing the payment of any tax refund or the allowance of any tax credit.
- (13) Engagement in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws of the state of Louisiana.

Proposed law authorizes a court to enjoin a paid tax preparer from preparing tax returns for this state if the court finds that a tax preparer has continually or repeatedly engaged in any conduct and that an injunction to enjoin such conduct will not be sufficient to prevent the tax preparer from interfering with the administration of the state's tax laws.

Proposed law provides that suspension from practice before the IRS or another state establishes a prima facie case for a court to enjoin a paid tax preparer from preparing tax returns for this state.

Proposed law defines "tax preparer" as a person who prepares all or a substantial portion of a tax return or claim for refund for compensation or who employs others to prepare tax returns or claims for refund.

Effective upon the signature of the governor.

(Adds R.S. 47:1574.2)