

2018 Regular Session

SENATE BILL NO. 238

BY SENATOR MORRELL

REVENUE DEPARTMENT. Authorizes the Department of Revenue to seek to enjoin preparers who engage in certain conduct. (7/1/18)

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 preparers who engage in certain conduct; to provide a list of  
4 the conduct that may be enjoined; to authorize the enjoining of preparers who engage  
5 in prohibited conduct from preparing returns for this state; to provide for definitions;  
6 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 preparers**

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

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

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

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

10           (3) Where required, failed to furnish copy of return, report, claim for  
11           refund, or other claim.

12           (4) Where required, failed to sign return, report, claim for refund, or  
13           other claim.

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

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

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

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

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

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

23           (11) Misrepresented the preparer's eligibility to practice before the  
24           Department of Revenue or otherwise misrepresented the preparer's experience  
25           or education.

26           (12) Guaranteed the payment of any tax refund or the allowance of any  
27           tax credit or rebate.

28           (13) Engaged in any other fraudulent or deceptive conduct that  
29           substantially interferes with the proper administration of the tax laws of the

1 state of Louisiana.

2 C.(1) If the court finds that a preparer has engaged in any conduct  
3 described in Paragraphs (2), (9), (10), (11), (12), or (13) of Subsection B of this  
4 Section and that an injunction prohibiting the conduct would not be sufficient  
5 to prevent the person's interference with the proper administration of the tax  
6 laws of Louisiana, the court may enjoin the person from acting as a preparer in  
7 the state of Louisiana.

8 (2) If the court finds that a preparer has continually or repeatedly  
9 engaged in any conduct described in Paragraphs (1), (3), (4), (5), (6), (7), or (8)  
10 of Subsection B of this Section and that an injunction prohibiting the conduct  
11 would not be sufficient to prevent the person's interference with the proper  
12 administration of the tax laws of Louisiana, the court may enjoin the person  
13 from acting as a preparer in the state of Louisiana.

14 (3) The fact that the person has been enjoined from preparing tax  
15 returns or claims for refund for the United States or any other state, in the five  
16 years preceding the petition for an injunction shall establish a prima facie case  
17 for an injunction to be issued pursuant to this Section. For purposes of this  
18 Section, "state" shall mean a state of the United States, the District of  
19 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or  
20 insular possession subject to the jurisdiction of the United States.

21 D. The term "preparer" means any person who prepares or who  
22 employs one or more persons to prepare any return, report, claim for refund,  
23 or other claim that is filed with the secretary of the Department of Revenue. The  
24 preparation of a substantial portion of a return, report, claim for refund, or  
25 other claim shall be considered the preparation of the return, report, claim for  
26 refund, or other claim for purposes of this Section.

27 Section 2. This Act shall become effective on July 1, 2018.

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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 Engrossed                      2018 Regular Session                      Morrell

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

Proposed law provides a list of prohibited conduct for 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 preparer's eligibility to practice before the Department of Revenue or otherwise misrepresented the 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 preparer from preparing any return, report, claim for refund, or other claim for this state if the court finds that a preparer has continually or repeatedly engaged in any conduct and that an injunction to enjoin the conduct will not be sufficient to prevent the 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 preparer from preparing tax returns for this state.

Proposed law defines "preparer" as a person who prepares all or a substantial portion of a return, report, claim for refund or other claim or who employs others to prepare tax returns or claims for refund that is filed with the secretary of the Dept. of Revenue.

Effective July 1, 2018.

(Adds R.S. 47:1574.2)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Revenue and Fiscal Affairs to the original bill

1. Applies to preparers of any return, report, claim for refund, or other claim.
2. Provides definition of "preparer".
3. Changes effective date to July 1, 2018.