

DIGEST

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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 establishes a list of prohibited conduct for preparers.

- (1) Preparation of any return or claim for refund that includes a substantial understatement of a taxpayer's liability due to a frivolous or fraudulent 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) Negotiation of a check issued to a taxpayer by the Department of Revenue without the permission of the taxpayer.
- (4) Engagement in any conduct subject to any criminal penalty provided by Title 47 of the Louisiana Revised Statutes of 1950.
- (5) Misrepresentation of the preparer's eligibility to practice before the Department of Revenue or otherwise misrepresented the preparer's experience or education.
- (6) Guaranteeing the payment of any tax refund or the allowance of any tax credit.
- (7) 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 preparer from preparing any return, report, claim for refund, or other claim if the court finds that an injunction prohibiting 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 in La.

Proposed law defines a "substantial understatement" as the understatement of the amount of tax payable or the overstatement if the amount of tax creditable or refundable exceeds the greater of 10% of the tax required to be shown for the taxable period on the return or \$1,000.

Proposed law defines "frivolous position" as any position that is knowingly advanced in bad faith, is patently improper, reflects a desire to delay or impede the administration of state tax laws by using unreasonable, baseless, unsubstantiated or questionable facts or is identified by the I.R.S. as frivolous.

Proposed law defines "fraudulent position" as any position taken with the intent to evade taxes or that is a willful attempt to defraud or evade taxes that are due.

Proposed law defines a "preparer" as any of the following:

- (1) Any person who prepares, for compensation, any return, report, claim for refund or other claim that is filed with the secretary of the DOR.

- (2) Any person who owns or operates a business, the primary activity of which is the preparation of any return, report, claim for refund, or other claim that is filed with the DOR, and employs one or more persons in such business.
- (3) Any person who prepares a substantial portion of a return, report, claim for refund, or other claim that is filed with DOR and does not sign as the preparer, but rather has the taxpayer sign as if the return, report or claim were self-prepared.

Proposed law excludes from the definition of "preparer", any employee who prepares a return, report, claim for refund, or other claim for the employer by whom he is regularly and continuously employed or an attorney or other tax advisor whose association with a return, report, claim for refund, or other claim is limited to rendering advice and is not otherwise involved in preparing the return, report, claim for refund, or other claim for which the advice was rendered.

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.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the engrossed bill:

1. Change the act that could result in the secretary seeking an injunction from the court from a return that includes an understatement of a taxpayer's liability due to an unreasonable position to a *substantial* understatement of a taxpayer's liability due to a *frivolous or fraudulent* position.
2. Delete the definition for "unreasonable position" and add definitions for "substantial understatement", "frivolous position", and "fraudulent position".
3. Delete conduct which may result in the secretary seeking an injunction from the court such as failing to provide a copy of a return, failing to sign a return, failing to provide an identifying number, and failing to retain records.
4. Delete authority for a court to enjoin a party from acting as a preparer if the court finds the preparer has continually or repeatedly engaged in conduct that prevents the person's interference with the proper administration of tax laws in this state.
5. Clarify the definition of "paid preparer" and exclude from the definition employees regularly and continuously employed to prepare returns or attorneys or other tax advisors whose association with a return is limited to rendering advice to a taxpayer or preparer and not otherwise involved in preparing the return for which advice was rendered.