

SENATE SUMMARY OF HOUSE AMENDMENTS**SB 238****2018 Regular Session****Morrell****KEYWORD AND SUMMARY AS RETURNED TO THE SENATE**

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

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Changes 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. Deletes the definition for "unreasonable position" and adds definitions for "substantial understatement", "frivolous position", and "fraudulent position".
3. Deletes 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. Deletes the "continually or repeatedly engaged in any conduct" requirement in order for a court to enjoin a party from acting as a preparer; and allows the court to enjoin a party from acting as a preparer if the court finds the preparer has engaged in any listed conduct and an injunction prohibiting the conduct would not be sufficient to prevent the person's interference with the proper administration of tax laws in this state.
5. Changes the definition of "preparer" and provides exceptions.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

SB 238 Engrossed

2018 Regular Session

Morrell

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

Proposed law establishes the following 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 Dept. of Revenue (DOR) 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) 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 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 Internal Revenue Service (IRS) 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 authorizes a court to enjoin a preparer from preparing any return, report, claim for refund, or other claim if the court finds a preparer has engaged in any listed conduct and 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 "preparer" as any of the following:

- (1) Any person who prepares 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 secretary of 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 the secretary of the 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 of the following:

- (1) Any employee who prepares a return, report, claim for refund, or other claim for the employer by whom he is regularly and continuously employed.
- (2) 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)

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