

SENATE BILL NO. 238

BY SENATOR MORRELL

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:**

18 **(1) Prepared any return, report, claim for refund, or other claim that**  
19 **includes a substantial understatement of a taxpayer's liability due to a frivolous**  
20 **or fraudulent position. For purposes of this Section, the following terms shall**  
21 **have the following meanings:**

22 **(a) "Substantial understatement" means a case in which the**  
23 **understatement of the amount of tax payable or the overstatement of the**  
24 **amount of tax creditable or refundable exceeds the greater of ten percent of the**  
25 **tax required to be shown for the taxable period on the return, report, claim for**  
26 **refund, or other claim or one thousand dollars.**

27 **(b) "Frivolous position" means any position that is knowingly advanced**

1 in bad faith, is patently improper, reflects a desire to delay or impede the  
2 administration of Louisiana tax laws by using unreasonable, baseless,  
3 unsubstantiated or questionable facts or is identified by the Internal Revenue  
4 Service as frivolous.

5 (c) "Fraudulent position" means any position taken with the intent to  
6 evade taxes or that is a willful attempt to defraud or evade taxes that are due.

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

11 (3) Negotiated a check issued to a taxpayer by the Department of  
12 Revenue without the permission of the taxpayer.

13 (4) Engaged in any conduct subject to any criminal penalty provided in  
14 Title 47 of the Louisiana Revised Statutes of 1950.

15 (5) Engaged in any other fraudulent or deceptive conduct that  
16 substantially interferes with the proper administration of the tax laws of the  
17 state of Louisiana.

18 C.(1) If the court finds that a preparer has engaged in any conduct  
19 described in Subsection B of this Section and that an injunction prohibiting the  
20 conduct would not be sufficient to prevent the person's interference with the  
21 proper administration of the tax laws of Louisiana, the court may enjoin the  
22 person from acting as a preparer in the state of Louisiana.

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

30 D.(1) For purposes of this Section, the term "preparer" shall mean any

1 of the following:

2 (a) Any person who prepares any return, report, claim for refund, or  
3 other claim that is filed with the secretary of the Department of Revenue.

4 (b) Any person who owns or operates a business, the primary activity  
5 of which is the preparation of any return, report, claim for refund, or other  
6 claim that is filed with the secretary of the Department of Revenue, and employs  
7 one or more persons in such business.

8 (c) Any person who prepares a substantial portion of a return, report,  
9 claim for refund, or other claim that is filed with the secretary of the  
10 Department of Revenue and does not sign as the preparer, but rather has the  
11 taxpayer sign as if the return, report, claim for refund, or other claim were  
12 self-prepared.

13 (2) Nothing in this Subsection shall be construed to include in the  
14 definition of "preparer" either of the following:

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

18 (b) An attorney or other tax advisor whose association with a return,  
19 report, claim for refund, or other claim is limited to that of rendering advice to  
20 a taxpayer or preparer and was not otherwise involved in preparing the return,  
21 report, claim for refund, or other claim for which advice was rendered.

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

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_