

RÉSUMÉ DIGEST

ACT 526 (SB 238)

2018 Regular Session

Morrell

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

New 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 DOR without the permission of the taxpayer.
- (4) Engagement in any conduct subject to any criminal penalty provided by Title 47 of the La. 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.

New 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.

New 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.

New 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.

New 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.

New 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.

New 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.

New 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)