

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to tax return preparers  
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 7, “Practice and Procedure Before the Department of Revenue,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 421.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 421.62 to 421.64.

*Purpose and Summary*

The Department proposes this rule making to implement new provisions that were added to Iowa Code chapter 421 by 2019 Iowa Acts, House File 590. Iowa Code section 421.62 defines “tax return preparer” and sets forth a penalty for tax return preparers who fail to include their preparer tax identification number on certain returns or claims for refund they prepare under Iowa Code chapter 422. Iowa Code section 421.63 grants the Department the authority to enjoin certain tax return preparers. Lastly, Iowa Code section 421.64 imposes continuing education requirements on tax return preparers.

*Fiscal Impact*

This rule making has no fiscal impact beyond that of the legislation it is intended to implement. A fiscal estimate prepared by the Department for similar legislation is available upon request.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 17, 2020. Comments should be directed to:

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## Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

### Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following new rule 701—7.36(421):

#### **701—7.36(421) Tax return preparers.**

**7.36(1) Definitions.** For the purposes of this rule and for Iowa Code sections 421.62, 421.63, and 421.64, the following definitions apply:

“An enrolled agent enrolled to practice before the federal Internal Revenue Service (IRS) pursuant to 31 CFR §10.4” means an individual who has an active status as an enrolled agent under 31 CFR §10.4(a) or (d) and is not currently under suspension or disbarment from practice before the IRS. An enrolled agent does not include an enrolled retirement plan agent under 31 CFR §10.4(b) or a registered tax return preparer under 31 CFR §10.4(c).

“An individual admitted to practice law in this state or another state” means an individual who has an active license to practice law in this state or another state, is considered in good standing with the licensing authority of this or another state, and is currently authorized to engage in the practice of law.

“An individual licensed as a certified public accountant or a licensed public accountant under Iowa Code chapter 542 or a similar law of another state” means an individual who meets one of the following requirements:

1. The individual has an active certified public accountant license under Iowa Code chapter 542 or a similar law of another state, is in good standing with the Iowa accountancy examining board or similar authority of another state, and is currently authorized to engage in the practice of public accounting as a certified public accountant.

2. The individual has an active public accountant license under Iowa Code chapter 542 or a similar law of another state, is in good standing with the Iowa accountancy examining board or similar authority of another state, and is currently authorized to engage in the practice of public accounting.

“Hour of continuing education” means a minimum of 50 minutes spent by a tax return preparer in actual attendance at or completion of an IRS-approved provider of continuing education course.

“New tax preparer” means an individual who qualifies as a “tax return preparer” under Iowa Code section 421.62 for the current tax year but would not have qualified as such during any prior calendar year. See paragraph 7.36(8)“a” for examples regarding who qualifies as a new tax preparer.

“Tax return or claim for refund” means any return or claim for refund under Iowa Code chapter 422, excluding withholding returns under Iowa Code section 422.16.

“Tax return preparer” means any individual who, for a fee or other consideration, prepares ten or more tax returns or claims for refund under Iowa Code chapter 422 during a calendar year, or who assumes final responsibility for completed work on such tax returns or claims for refund under Iowa Code chapter 422 on which preliminary work has been done by another individual.

“Tax return preparer” does not include any of the following:

1. An individual licensed as a certified public accountant or a licensed public accountant under Iowa Code chapter 542 or a similar law of another state.

2. An individual admitted to practice law in this state or another state.
3. An enrolled agent enrolled to practice before the federal IRS pursuant to 31 CFR §10.4.
4. A fiduciary of an estate, trust, or individual, while functioning within the fiduciary's legal duty and authority with respect to that individual or that estate or trust or its testator, trustor, grantor, or beneficiaries.
5. An individual who prepares the tax returns of the individual's employer, while functioning within the individual's scope of employment with the employer.
6. An individual employed by a local, state, or federal government agency, while functioning within the individual's scope of employment with the government agency.
7. An employee of a tax return preparer, if the employee provides only clerical or other comparable services and does not sign tax returns.

See paragraph 7.36(8) "a" for examples regarding who qualifies as a tax return preparer.

**7.36(2) *Penalty for tax return preparer's failure to include preparer tax identification number (PTIN) on tax returns or claims for refund.*** On or after January 1, 2020, a tax return preparer who fails to include the tax return preparer's PTIN on any tax return or claim for refund shall pay to the department a penalty of \$50 for each violation, unless the tax return preparer shows that the failure was reasonable under the circumstances and not willful or reckless conduct. The maximum aggregate penalty imposed upon a tax return preparer pursuant to Iowa Code section 421.62 and this rule shall not exceed \$25,000 during any calendar year. See paragraph 7.36(8) "c" for examples pertaining to the tax return preparer PTIN requirement.

**7.36(3) *Tax return preparer continuing education requirement.*** Beginning January 1, 2020, and every year thereafter, a tax return preparer shall complete a minimum of 15 hours of continuing education courses each year. At least two hours of continuing education shall be on professional ethics, and the remaining hours shall pertain to federal or state income tax. Each course shall be taken from an IRS-approved provider of continuing education. If a course offered by an IRS-approved provider is primarily on state-specific income tax content, the course will qualify for the continuing education requirements under Iowa Code section 421.64 and this rule, even if such course does not count toward federal continuing professional education. Tax return preparers who complete more than the required 15 hours of continuing education in one calendar year may not count the excess hours toward a subsequent year's requirement. See paragraph 7.36(8) "b" for examples pertaining to the tax return preparer continuing education requirement.

**7.36(4) *Preparation of tax returns or claims for refund.*** An individual prepares a tax return or claim for refund when the individual signs (or should sign) a return, either because the individual completes the return or because the individual assumes final responsibility for preliminary work completed by other individuals.

**7.36(5) *Approved providers and courses.***

*a. Approved providers of continuing education.* Any IRS-approved provider of continuing education is acceptable. It is not mandatory that a continuing education course be taken from an Iowa provider.

*b. Approved continuing education course subject matters.* All continuing education courses shall be on the topics of federal or state income tax or professional ethics.

*c. Approved continuing education format.* Continuing education courses that satisfy the requirements of Iowa Code section 421.64 and this rule may be taken for credit in person, online, or by self-study, as long as they are administered by an IRS-approved provider of continuing education.

**7.36(6) *Reporting hours of continuing education and retaining records.***

*a. Reporting hours of continuing education to the department.* Tax return preparers shall report their continuing education hours to the department by February 15 of the calendar year following the year in which hours were completed to be eligible to prepare tax returns or claims for refund. Hours must be reported using IA Form 78-012. If a tax return preparer fails to complete the required minimum hours of continuing education by the date prescribed in this subrule, the individual must show that failure to do so was reasonable under the circumstances and not willful or reckless conduct. IRS-approved providers are not required to report continuing education courses to the department.

*b. Retaining records of continuing education.* Tax return preparers are required to retain records of continuing education completion for a minimum of five years. This record retention shall include, but is not limited to, certificates of completion if offered by the IRS-approved provider of continuing education upon completion of a course.

**7.36(7) Reinstatement of a tax return preparer.** When a tax return preparer fails to complete the minimum 15 hours of continuing education courses as required by Iowa Code section 421.64 and this rule but demonstrates that the failure was reasonable under the circumstances and not willful or reckless conduct, the department may require the tax return preparer to make up any uncompleted hours and submit a completed IA Form 78-012 to the department by a date set by the department before the tax return preparer may engage in activity as a tax return preparer.

**7.36(8) Examples.**

*a. Tax return preparer examples.*

EXAMPLE 1: During the 2020 calendar year and every prior year, an individual, N, prepares nine or fewer tax returns or claims for refund described in this rule for a fee or other consideration. During the 2021 calendar year, N, for a fee or other consideration, prepares ten tax returns or claims for refund described in this rule. N meets the definition of a “tax return preparer” for the 2021 calendar year. Therefore, N will be subject to the penalty for failure to include N’s PTIN on every tax return or claim for refund described in this rule that N prepares during the 2021 calendar year. However, N also qualifies as a “new tax preparer” for the 2021 calendar year because this is the first year N satisfies the definition of a “tax return preparer.” Therefore, N does not need to complete 15 hours of continuing education courses during 2020 to prepare returns in 2021, but N will need to complete the minimum 15 hours of continuing education courses during the 2021 calendar year to be eligible to prepare returns during the 2022 calendar year if N will meet the definition of “tax return preparer” in 2022.

EXAMPLE 2: An individual, B, prepares ten tax returns or claims for refund described in this rule during the 2019 calendar year for a fee or other consideration. Therefore, B is a tax return preparer. However, B is not required to complete any hours of continuing education courses prior to preparing returns in 2020, nor will B incur a penalty for failing to include B’s PTIN on any of those returns prepared in calendar year 2019 because the requirements described in this rule do not take effect until January 1, 2020.

Assume B continues to prepare tax returns or claims for refund described in this rule for a fee or other consideration during the 2020 calendar year, but B only prepares a total of nine such tax returns throughout the entire 2020 calendar year. B does not complete any hours of continuing education courses during the 2020 calendar year. B will not be eligible to prepare ten or more tax returns or refund claims described in this rule for a fee or other consideration during the 2021 calendar year because even though B did not prepare ten or more tax returns or claims for refund in 2020, B would have been classified as a tax return preparer in 2019. Thus, B is not considered a new tax preparer for purposes of the 2021 calendar year.

*b. Continuing education requirement examples.*

EXAMPLE 3: During the 2020 calendar year, an individual, P, prepares ten tax returns or claims for refund described in this rule for a fee or other consideration. Therefore, P is a tax return preparer. During the 2020 calendar year, P also completes 30 hours of continuing education courses from programs offered by an IRS-approved provider of continuing education, 4 hours of which are on professional ethics and the remaining hours on income tax. P is eligible to prepare Iowa tax returns during the 2021 calendar year. However, P must complete 15 additional hours of continuing education courses offered by an IRS-approved provider, including 2 hours of professional ethics and the remaining hours on income tax, during the 2021 calendar year to be eligible to prepare Iowa tax returns during the 2022 calendar year if P will meet the definition of “tax return preparer” in 2022. P’s excess hours completed in 2020 may not be applied toward the 15 hours of continuing education courses that P must complete in 2021 to be eligible to prepare returns in 2022.

EXAMPLE 4: During the 2020 calendar year, a tax return preparer, P, completes 12 hours of continuing education courses from programs offered by an IRS-approved provider of continuing education. Two of the hours are on professional ethics, and the rest relate to income tax. P is not eligible to prepare Iowa

tax returns during the 2021 calendar year, regardless of the year of the returns P is preparing, because P has not completed a total of 15 continuing education hours during the 2020 calendar year. During the 2021 calendar year, P completes 15 hours of continuing education courses from programs offered by an IRS-approved provider. Two of P's hours are from professional ethics courses, and the remaining 13 hours are from income tax courses. P is eligible to prepare returns during the 2022 calendar year, regardless of the years of the returns P prepares. However, P is still ineligible to prepare returns for the remaining duration of the 2021 calendar year, regardless of the years of the returns P wishes to prepare.

*c.* PTIN requirement examples.

EXAMPLE 5: An individual, X, works at a firm in the business of preparing tax returns for a fee or other consideration. X completes a substantial amount of preliminary work on ten tax returns described in this rule during the scope of X's employment (that are not the tax returns of X's employer) during the 2020 calendar year, but X does not assume final responsibility for the work or sign the returns. Instead, X's supervisor, Y, reviews the work completed by X and signs the returns. Y is a tax return preparer because Y assumed final responsibility for the returns. Therefore, Y's PTIN is required on all of the returns. X's PTIN is not required on any of the returns, nor will X incur any penalties for omitting X's PTIN on the returns.

EXAMPLE 6: An individual, X, has a partnership with another individual, Y, in which X and Y prepare tax returns for a fee or other consideration. X completes ten returns described in this rule during the 2020 calendar year. However, before X signs or files the returns, X asks Y to review the returns. Y reviews the returns and suggests substantial changes, but Y then gives the returns back to X. X makes the necessary changes, then signs and files the returns. X is a tax return preparer. X's PTIN is required on all of the returns because X assumed final responsibility for the returns. Y's PTIN is not required on any of the returns. If X fails to include X's PTIN on any of the returns, X will incur a \$50 civil penalty for each violation unless X shows that X's failure was reasonable under the circumstances and not willful or reckless conduct.

EXAMPLE 7: An individual, X, completes five tax returns and five claims for refund described in this rule for a fee or other consideration during the 2020 calendar year. X does not sign the returns, even though no other paid tax return preparer reviewed X's work and took final responsibility for the return. X's PTIN is required on all of the returns because X is a paid tax return preparer for those returns, even though X failed to sign the returns as required. X is subject to a fine of \$50 per return that did not contain the required PTIN because X is a tax return preparer.

This rule is intended to implement Iowa Code sections 421.62, 421.63, and 421.64.