

Regulatory Analysis

Notice of Intended Action to be published: rule 701—8.9(421)
“Tax Return Preparers”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14
State or federal law(s) implemented by the rulemaking: Iowa Code sections 421.62, 421.63, and 421.64

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

April 22, 2025
2 to 2:30 p.m.

Via virtual/videoconference:
meet.google.com/ibd-btoe-djw

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis, which must be received by the Department of Revenue no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

This proposed rule describes the continuing education obligations and other requirements for Iowa tax return preparers to maintain and the penalties imposed if the obligations and requirements are not maintained. This rule previously existed as rule 701—7.36(17A), which was rescinded. Readopting the rule under Chapter 8 provides the benefit of providing definitions and examples as useful guidance.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**
 - **Classes of persons that will bear the costs of the proposed rulemaking:**
No classes of persons have been identified to bear the costs of the proposed rule.
 - **Classes of persons that will benefit from the proposed rulemaking:**
Tax return preparers will benefit by having clear and consistent guidance for their requirements, as provided in this proposed rulemaking.
2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**
 - **Quantitative description of impact:**
No economic impact as a result of the proposed rule has been identified. The penalties described in this chapter are imposed by statute. The rule itself imposes no additional costs.
 - **Qualitative description of impact:**

The rule serves to provide guidelines in the form of definitions and examples to help both the Department and tax return preparers understand how requirements and related penalties apply to tax return preparers to operate in Iowa and maintain continuing education requirements.

3. **Costs to the State:**

• **Implementation and enforcement costs borne by the agency or any other agency:**

There are no costs to the Department related to implementing the proposed rule beyond those that would otherwise be required to administer the statute.

• **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

There are no costs associated with the proposed rule. The benefits of the rule are reducing confusion and providing consistency for requirements expected of tax return preparers.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The proposed rulemaking is not costly or intrusive.

6. **Alternative methods considered by the agency:**

• **Description of any alternative methods that were seriously considered by the agency:**

The Department considered the possibility of not providing the rule in this chapter but determined that it provides useful guidance to tax return preparers.

• **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

The absence of this rule would lead to confusion and reduce consistency on the requirements expected of tax return preparers.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rule does not have a substantial impact on small business since it does not make any special distinctions for small businesses.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** rule 701—8.9(421):

701—8.9(421) Tax return preparers.

8.9(1) Definitions. Unless otherwise indicated in this rule or required by the context, all words and phrases used in this rule that are defined under Iowa Code sections 421.62, 421.63, and 421.64 shall have the same meaning as provided under those Iowa Code sections.

“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 has an active certified public accountant license or an active public accountant license under Iowa Code chapter 542 or a similar law of another state and is in good standing with the accountancy examining board or similar authority of another state.

“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 for the current tax year but would not have qualified as such during any prior calendar year. Paragraph 8.9(8)“a” includes examples regarding who qualifies as a new tax preparer.

8.9(2) *Penalty for tax return preparer’s failure to include preparer tax identification number (PTIN) on income tax returns or claims for refund.* A tax return preparer who fails to include the tax return preparer’s PTIN on any income tax return or claim for refund prepared by the tax return preparer and filed with the department is subject to a penalty pursuant to Iowa Code section 421.62(2). Paragraph 8.9(8)“c” includes examples pertaining to the tax return preparer PTIN requirement.

8.9(3) *Tax return preparer continuing education requirement.* 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. Paragraph 8.9(8)“b” includes examples pertaining to the tax return preparer continuing education requirement.

8.9(4) *Preparation of income tax returns or claims for refund.* An individual prepares an income 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.

8.9(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. Only continuing education courses on the topics of federal or state income tax or professional ethics are approved for credit.

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.

8.9(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 income tax returns or claims for refund. Hours must be reported using IA Form 78-012 or by completing the Income Tax Preparer Continuing Education form on GovConnectIowa. 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 not be limited to certificates of completion if offered by the IRS-approved provider of continuing education upon completion of a course.

8.9(7) Reinstatement of a tax return preparer. When a tax return preparer fails to complete the minimum 15 hours of continuing education courses 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 or complete the Income Tax Preparer Continuing Education form on GovConnectIowa by a date set by the department before the tax return preparer may engage in activity as a tax return preparer.

8.9(8) Examples.

a. Tax return preparer examples.

EXAMPLE 1: During prior calendar years, an individual, N, prepared nine or fewer income tax returns or claims for refund for a fee or other consideration. During the current calendar year, N, for a fee or other consideration, prepares ten income tax returns or claims for refund. N meets the definition of a “tax return preparer” for the current calendar year. Therefore, N will be subject to the penalty for failure to include N’s PTIN on every income tax return or claim for refund that N prepares during the current calendar year. However, N also qualifies as a new tax preparer for the current 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 the prior calendar year to prepare returns in the current calendar year. N will need to complete the minimum 15 hours of continuing education courses during the current calendar year to be eligible to prepare returns during the following calendar year if N meets the definition of “tax return preparer” in the following calendar year.

EXAMPLE 2: An individual, B, prepared ten income tax returns or claims for refund during a prior calendar year for a fee or other consideration. Therefore, B is a tax return preparer. B continues to prepare income tax returns or claims for refund for a fee or other consideration during the current calendar year, but B only prepares a total of nine such tax returns throughout the current calendar year. B does not complete any hours of continuing education courses during the current calendar year. B will not be eligible to prepare ten or more income tax returns or refund claims for a fee or other consideration during the next calendar year because, even though B did not prepare ten or more income tax returns or claims for refund in the current calendar year, B would have been classified as a tax return preparer in a prior calendar year. Thus, B is not considered a new tax preparer.

b. Continuing education requirement examples.

EXAMPLE 3: During the calendar year, an individual, P, prepares ten income tax returns or claims for refund for a fee or other consideration. Therefore, P is a tax return preparer. During the 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 returns during the next calendar year. However, P must complete 15 additional hours of continuing education courses offered by an IRS-approved provider, including 2 hours on professional ethics and the remaining hours on income tax, during the next calendar year to be eligible to prepare returns in the following calendar year if P is to meet the definition of “tax return preparer” in the following calendar year. P’s excess hours completed

in a previous calendar year may not be applied toward the 15 hours of continuing education courses that P must complete in a future calendar year.

EXAMPLE 4: During the prior 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 income tax returns or claims for refund during the current calendar year, regardless of the tax year of the returns P is preparing, because P has not completed a total of 15 continuing education hours during the prior calendar year. During the current 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 following calendar year, regardless of the tax years of the returns P prepares. However, P is still ineligible to prepare returns for the remaining duration of the current calendar year, regardless of the tax 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 income tax returns for a fee or other consideration. X completes a substantial amount of preliminary work on ten returns (that are not the returns of X's employer) described in this rule during the scope of X's employment during the 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 income tax returns for a fee or other consideration. X completes ten income tax returns during the 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 omits X's PTIN on any of the returns, X will incur a \$50 civil penalty for each violation unless X shows that the omission was reasonable under the circumstances and not willful or reckless conduct.

EXAMPLE 7: An individual, X, completes five income tax returns and five claims for refund for a fee or other consideration during a 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 omitted 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.