

House File 590 - Introduced

HOUSE FILE 590
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO HSB 147)

A BILL FOR

1 An Act relating to tax return preparers, and providing
2 penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 421.62 Inclusion of preparer tax
2 identification number.

3 1. For purposes of this section, unless the context
4 otherwise requires:

5 a. "Department" means the Iowa department of revenue.

6 b. "PTIN" means a preparer tax identification number, as
7 defined in Internal Revenue Service Notice 2011-6.

8 c. (1) "Tax return preparer" means any individual who, for
9 a fee or other consideration, prepares ten or more tax returns
10 or claims for refund under chapter 422 during a calendar year,
11 or who assumes final responsibility for completed work on such
12 tax returns or claims for refund under chapter 422 on which
13 preliminary work has been done by another individual.

14 (2) "Tax return preparer" does not include any of the
15 following:

16 (a) An individual licensed as a certified public accountant
17 or a licensed public accountant under chapter 542 or a similar
18 law of another state.

19 (b) An individual admitted to practice law in this state or
20 another state.

21 (c) An enrolled agent enrolled to practice before the
22 federal internal revenue service pursuant to 31 C.F.R. §10.4.

23 (d) A fiduciary of an estate, trust, or individual, while
24 functioning within the fiduciary's legal duty and authority
25 with respect to that individual, or that estate or trust or its
26 testator, trustor, grantor, or beneficiaries.

27 (e) An individual who prepares the tax returns of
28 the individual's employer, while functioning within the
29 individual's scope of employment with the employer.

30 (f) An individual employed by a local, state, or federal
31 government agency, while functioning within the individual's
32 scope of employment with the government agency.

33 (g) An employee of a person described in subparagraph (1),
34 if the employee provides only clerical or other comparable
35 services and does not sign tax returns.

1 *d. "Willful or reckless"* means the same as *"willful or*
2 *reckless conduct"* defined in section 6694(b)(2) of the Internal
3 Revenue Code.

4 2. *a.* On or after January 1, 2020, a tax return preparer is
5 required to include the tax return preparer's PTIN on any tax
6 return or claim for refund prepared by the tax return preparer
7 and filed under chapter 422.

8 *b.* (1) A tax return preparer who violates paragraph "a"
9 shall pay a civil penalty in the amount of fifty dollars for
10 each violation unless the tax return preparer shows that the
11 failure was reasonable under the circumstances and not willful
12 or reckless conduct.

13 (2) The maximum aggregate penalty imposed upon a tax
14 return preparer pursuant to this subsection shall not exceed
15 twenty-five thousand dollars during any calendar year.

16 (3) The penalty shall be paid to the department.

17 3. The department shall draft relevant tax return forms
18 to provide the space necessary for a tax return preparer to
19 include a PTIN.

20 4. This section shall not be construed to limit the
21 authority of the department to require any individual preparing
22 a tax return to include the individual's PTIN.

23 Sec. 2. NEW SECTION. **421.63 Authority to enjoin certain tax**
24 **return preparers.**

25 1. For purposes of this section, unless the context
26 otherwise requires:

27 *a.* "Department" means the Iowa department of revenue.

28 *b.* "State" means any state of the United States, the
29 District of Columbia, Puerto Rico, the United States Virgin
30 Islands, or any territory or insular possession subject to the
31 jurisdiction of the United States.

32 *c.* "Tax return preparer" means the same as defined in
33 section 421.62.

34 *d.* "Unreasonable position" means the same as defined in
35 section 6694(a)(2) of the Internal Revenue Code.

1 *e. "Willful or reckless"* means the same as *"willful or*
2 *reckless conduct"* defined in section 6694(b)(2) of the Internal
3 Revenue Code.

4 2. The director of the department may seek a temporary or
5 permanent injunction from any court of competent jurisdiction
6 to prevent a tax return preparer from engaging in further
7 conduct described in subsection 3.

8 3. A tax return preparer may be temporarily or permanently
9 enjoined from engaging in activity described in section 421.62,
10 subsection 1, paragraph *"c"*, if the court finds that a tax
11 return preparer has continually engaged in the following
12 conduct and that injunctive relief is necessary to prevent the
13 recurrence of such conduct:

14 *a.* Preparation of any income tax return or claim for refund
15 that includes an unreasonable position that understates the
16 taxpayer's liability.

17 *b.* Preparation of any income tax return or claim for refund
18 that includes a willful or reckless understatement of the
19 taxpayer's liability.

20 *c.* Failure to do any of the following:

21 (1) Furnish a copy of an income tax return or claim for
22 refund, when required.

23 (2) Sign the income tax return or claim for refund, when
24 required.

25 (3) Furnish an identifying number, when required.

26 (4) Retain a copy of the income tax return, when required.

27 (5) Complete continuing education requirements as required
28 pursuant to section 421.64.

29 (6) Use diligence in determining eligibility for tax
30 benefits, when subject to due diligence requirements imposed by
31 department rules.

32 *d.* Negotiating on behalf of a taxpayer the issuance of
33 a check by the department, without the permission of the
34 taxpayer.

35 *e.* Engaging in conduct subject to a criminal penalty under

1 this chapter.

2 *f.* Misrepresenting the eligibility of the preparer to
3 practice before the department or otherwise misrepresenting the
4 experience or education of the preparer.

5 *g.* Guaranteeing the payment of any income tax refund or the
6 allowance of any income tax credit.

7 *h.* Engaging in any other fraudulent or deceptive conduct
8 that substantially interferes with the proper administration
9 of the tax laws of this state.

10 4. The fact that the person has been enjoined from preparing
11 tax returns or claims for refund for the United States or
12 any other state, in the five years preceding the petition
13 for an injunction, shall establish a prima facie case for an
14 injunction to be issued pursuant to this section.

15 Sec. 3. NEW SECTION. 421.64 Tax return preparer —
16 continuing education.

17 1. For purposes of this section, "*tax return preparer*" means
18 the same as defined in section 421.61.

19 2. *a.* Beginning January 1, 2020, and every year thereafter,
20 a tax return preparer shall complete a minimum of fifteen
21 hours of continuing education courses on subject matters
22 prescribed by the department of revenue, including two hours
23 of continuing education on professional ethics. Each course
24 shall be taken from an Internal Revenue Service approved
25 provider of continuing education. A tax return preparer shall
26 not engage in activity as such a preparer unless the preparer
27 has completed, during the previous calendar year, a minimum of
28 fifteen hours of continuing education courses prescribed by
29 the department of revenue, including two hours of continuing
30 education on professional ethics. For purposes of completing
31 continuing education pursuant to this section, a new tax
32 preparer shall not be required to complete continuing education
33 prior to the first year of preparing returns.

34 *b.* A tax return preparer is required to retain records of
35 continuing education completion.

1

EXPLANATION

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The inclusion of this explanation does not constitute agreement with
3 the explanation's substance by the members of the general assembly.

3

4 This bill relates to tax return preparers. On or after
5 January 1, 2020, the bill requires all tax return preparers to
6 include the tax return preparer's federally issued preparer
7 tax identification number (PTIN) on any tax return or refund
8 claim prepared by the tax return preparer and filed under Code
9 chapter 422, which governs the Iowa individual and corporate
10 income taxes and franchise taxes.

11 The bill defines "tax return preparer" to generally include
12 individuals who prepare 10 or more Iowa tax returns or refund
13 claims in a calendar year. A certified or licensed accountant,
14 a licensed attorney, certain fiduciaries, employees who
15 prepare tax returns of their employers, and other employees are
16 excluded from the definition. However, the bill shall not be
17 construed to limit the authority of the department of revenue
18 to require the professions excluded from the definition of tax
19 preparer in the bill to include the preparer's PTIN as required
20 by the department of revenue.

21 If a tax return preparer fails to include the preparer's
22 PTIN on any tax return or claim for refund, the preparer
23 shall be subject to a civil penalty in the amount of \$50 for
24 each violation, unless the tax return preparer shows that the
25 failure was reasonable under the circumstances and not willful
26 or reckless conduct.

27 The bill specifies that a tax return preparer may be
28 temporarily or permanently enjoined from preparing Iowa tax
29 returns or refund claims if the court finds that injunctive
30 relief is necessary to prevent the recurrence of certain
31 conduct.

32 Beginning January 1, 2020, and every year thereafter, a
33 tax return preparer shall complete a minimum of 15 hours of
34 continuing education courses on subject matters prescribed by
35 the department of revenue, including two hours of continuing

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1 education on professional ethics.