

House Study Bill 147 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON KAUFMANN)

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

22 1. For purposes of this section, unless the context
23 otherwise requires:

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

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

29 *c.* "Tax return preparer" means the same as defined in
30 section 421.62.

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

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

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

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

11 a. Preparation of any income tax return or claim for refund
12 that includes an unreasonable position that understates the
13 taxpayer's liability.

14 b. Preparation of any income tax return or claim for refund
15 that includes a willful or reckless understatement of the
16 taxpayer's liability.

17 c. Failure to do any of the following:

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

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

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

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

24 (5) Complete continuing education requirements as required
25 pursuant to section 421.64.

26 (6) Use diligence in determining eligibility for tax
27 benefits, when subject to due diligence requirements imposed by
28 department rules.

29 d. Negotiating on behalf of a taxpayer the issuance of
30 a check by the department, without the permission of the
31 taxpayer.

32 e. Engaging in conduct subject to a criminal penalty under
33 this chapter.

34 f. Misrepresenting the eligibility of the preparer to
35 practice before the department or otherwise misrepresenting the

1 experience or education of the preparer.

2 *g.* Guaranteeing the payment of any income tax refund or the
3 allowance of any income tax credit.

4 *h.* Engaging in any other fraudulent or deceptive conduct
5 that substantially interferes with the proper administration
6 of the tax laws of this state.

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

12 **Sec. 3. NEW SECTION. 421.64 Tax return preparer —**
13 **continuing education.**

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

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

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

33

EXPLANATION

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

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

8 The bill defines "tax return preparer" to generally include
9 individuals who prepare 10 or more Iowa tax returns or refund
10 claims in a calendar year. A certified or licensed accountant,
11 a licensed attorney, certain fiduciaries, employees who
12 prepare tax returns of their employers, and other employees are
13 excluded from the definition.

14 If a tax return preparer fails to include the preparer's
15 PTIN on any tax return or claim for refund, the preparer
16 shall be subject to a civil penalty in the amount of \$50 for
17 each violation, unless the tax return preparer shows that the
18 failure was reasonable under the circumstances and not willful
19 or reckless conduct.

20 The bill specifies that a tax return preparer may be
21 temporarily or permanently enjoined from preparing Iowa tax
22 returns or refund claims if the court finds that injunctive
23 relief is necessary to prevent the recurrence of certain
24 conduct.

25 Beginning January 1, 2020, and every year thereafter, a
26 tax return preparer shall complete a minimum of 15 hours of
27 continuing education courses on subject matters prescribed by
28 the department of revenue, including two hours of continuing
29 education on professional ethics.