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Overview

Extends regulations that apply only to preparers of individual income tax returns to apply to paid preparers for any tax return filed with the commissioner of revenue, as well as claims for refunds. Provides new civil penalties and authorizes administrative orders. Reorganizes and clarifies current regulations that apply to paid tax preparers.

Effective for claims and returns filed after December 31, 2017.

Section

- 1 Definitions.** Provides that the definitions in section 270C.445, which relates to tax preparation services, continue to apply to refund anticipation loans (RALs), and refund anticipation checks (RACs), which under the Revisor's Instruction in section 21 are recodified from 270C.445 to the new section 270C.4451, and to injunction actions under section 270C.447. Under current law 270C.447 contains its own definition of tax preparer which is repealed by section 22. The result is to consolidate definitions related to preparers in this section. Expands the definition of preparers from those who prepare individual income tax returns to include those who prepare any kind of tax return required to be filed with the commissioner of revenue, as well as claims for refunds, claims for homestead credit state refunds or renter property tax refunds, and the credit for military service in a combat zone. Clarifies that certified service providers, third-party bulk filers, and persons copying or providing other mechanical assistance are not preparers.

Section

- 2 Tax preparers; standards of conduct.** Adds to the standards of conduct by prohibiting preparers from:
- ▶ failing to provide the preparer’s identification number on the return if otherwise required under state or federal law;
 - ▶ reporting household income on homestead credit state refund or renter property tax refunds that the preparer knows or should know is inaccurate;
 - ▶ engaging in conduct subject to civil penalty;
 - ▶ failing to conform to the standards of conduct for preparers set out in administrative rules; or
 - ▶ engaging in incompetent or disreputable conduct as provided in administrative rules.
- 3 Nongame wildlife checkoff.** Changes a reference from “form” to “claim” to be consistent with definitions in section 1.
- 4 Penalty; administrative order.** Prohibits applying for refunds of preparer penalties for violations of the standards of conduct or cease and desist orders (authorized by this section).
Authorizes the commissioner to issue an administrative cease and desist order to a preparer who has violated or is about to violate the standards of conduct for preparers, the requirement that preparers issue itemized receipts, or requirements related to RALs and RACs. The administrative order is in addition to the current \$1,000 administrative penalty. The subject of a cease and desist order may request administrative review of the order under the contested case procedure by filing a hearing request within 30 days. The hearing must be conducted within ten days after receipt of the request.
The commissioner may impose a penalty of up to \$5,000 for each violation of a cease and desist order, and may collect the penalty as an income tax liability. This penalty is in addition to the \$1,000 penalty under current law and both are allowed expedited review from the Office of Administrative Hearings.
Adds a five year statute of limitations for imposing both the administrative penalty in current law and the proposed administrative order.
- 5 Exchange of data; State Board of Accountancy.** Makes conforming cross reference changes.
- 6 Exchange of data; Lawyers Board of Professional Responsibility.** Makes conforming cross reference changes.
- 7 Exchange of data; commissioner of revenue.** Makes conforming cross reference changes.
- 8 Enforcement; civil actions.** Makes conforming cross reference changes.
- 9 Exemptions; enforcement provisions.** Provides authority for the commissioner to impose administrative penalties and issue cease and desist orders against preparers who are otherwise exempt (attorneys, accounting professionals, enrolled agents, or an employee acting at their direction) if the individual has:

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- ▶ Had his or her professional license suspended for cause (other than failure to pay a professional license fee);
- ▶ Been convicted of a crime involving dishonesty or breach of trust;
- ▶ Been censured, suspended or disbarred under U.S. Treasury Department Circular 230, which relates to practice before the IRS;
- ▶ Been sanctioned by a civil or criminal court; or
- ▶ Demonstrated a pattern of willful disreputable conduct.

Also clarifies that registered accounting practitioners, registered accounting practitioner firms, and certified public accounting firms, all of which are subject to the jurisdiction of the State Board of Accountancy, are exempt from preparer regulations to the same extent as certified public accountants and other exempt individuals. Individuals acting as supervisors to exempt tax preparers are also exempt.

- 10 Powers additional.** Clarifies that the commissioner's powers and authority related to tax preparers are in addition to all other powers of the commissioner.
- 11 Publication of list of tax preparers subject to penalties.** Expands the list of circumstances that require the commissioner to include a preparer on the published list of preparers subject to penalty to preparers who have been:
- ▶ Convicted of crimes related to identity theft;
 - ▶ Subject to administrative penalty for more than one violation of the standards of conduct or regulations related to RALs and RACs;
 - ▶ Issued a cease and desist order that has become final as newly authorized in section 4; or
 - ▶ Subject to administrative penalty for failure to obey a cease and desist order as newly authorized in section 4.
- Publication does not apply if convictions or orders are under appeal or if the time for appeal has not expired.
- 12 Notice to tax preparer.** Removes the requirement that the written notice to tax preparers of pending publication be made by certified mail; this will allow notice by methods other than the U.S. Mail. Also conforms language related to the notice to other changes in this bill.
- 13 Form of list.** Conforms language related to the commissioner's discretion over the medium and method of list publication to other changes in this bill.
- 14 Removal from list.** Extends from 90 days to three years the time period after satisfaction of the preparer's sentence before the preparer may be removed from list; clarifies that this period includes probation and requirements payment of penalties.
- 15 Civil action.** Extends the state's authority to enjoin a preparer from engaging in prohibited conduct (conduct subject to civil or criminal penalty, misrepresentation of the preparer's eligibility to practice or authority, guaranteeing a refund, or fraudulent or deceptive conduct) to apply to preparers who appear to the commissioner to be about to engage in such conduct. Requires the court to grant a permanent injunction or other appropriate relief if the

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commissioner shows that the preparer has violated or is about to violate a law administered by the commissioner or a cease and desist order under section 4.

Also adds Ramsey County District Court as a venue for DOR's civil action.

16 Injunction prohibiting specific conduct. Extends the court's authority to enjoin misconduct to apply to preparers who are about to engage in the misconduct. Adds violation or imminent violation of a cease and desist order under section 4 to the list of items that may be enjoined.

17 Injunction prohibiting business activities. Changes references from "tax return preparers" to "tax preparers" consistent with the definitions in section 1.

18 Enforcement of cease and desist orders. Directs the court to consider allegations in a final or pending cease and desist order under section 4 to be conclusively established in a commissioner-filed action to enforce the order.

Provides the court with new authority to enforce cease and desist orders, including an additional civil penalty of up to \$10,000 per violation of the order. Authorizes the commissioner to collect penalties as income tax liabilities. Prohibits the court from requiring the commissioner to post bond in actions under this section.

19 Tax preparers; civil penalties. Extends the current law \$500 civil penalty for reckless disregard or willful understatement of tax in chapter 289A to apply to claims for credit for military service in a combat zone, and replaces a definition of tax preparer with a reference to the definition in section 1.

20 Preparer identification number. Imposes a new \$500 civil penalty for failure to provide a tax preparer identification number. Also conforms chapter 289A requirements for provision of tax preparer identification numbers with changes in this bill, including a reference to the definition of tax preparer in section 1. This expands the requirement to apply to additional tax types; under current law, it only applies to individual income tax.

21 Revisor instruction. Directs the Revisor to recodify subdivisions relating to RALs and RACs into a new section 270C.4551 in the next compilation of Minnesota Statutes.

22 Repealer. Repeals:

270C.445, subdivision 1, which specifies the tax preparers subject to DOR oversight; that is replaced by the expanded definitions in section 1.

270C.447, subdivision 4, a definition of tax return preparer that is replaced by the consolidated definition in section 1.