



SPONSOR: Rep. Paradee & Sen. Walsh
Rep. Smyk

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 426
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO TAXES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter I, Chapter 5, of Title 30 of the Delaware Code by making deletions as shown by strike through, insertions as shown by underline and redesignating as follows:

§ 502 Definitions.

(b) Specific definitions. — Whenever used in this title, the following terms shall have the meanings ascribed to them in this subsection:

() “Paid tax preparer” means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return or claim for refund, or a substantial portion of any return or claim for refund under this Title. “Paid tax preparer” does not include anyone regulated under Chapter 1 of Title 24.

() “State” means a state of the United States, the District of Columbia, Puerto Rico, The United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

Section 2. Amend § 535, Title 30 of the Delaware Code by making deletions as shown by strike through, insertions as shown by underline and redesignating as follows:

(n) In addition to any other penalty provided by law, any person who is a paid tax preparer with respect to any return or claim for refund who fails to sign the return or claim for refund and to provide their preparer tax identification number as required by § 548 of this Title, shall pay a civil penalty of \$50 for each such failure, unless it can be shown that the failure was due to reasonable cause. The civil penalty imposed on any paid tax preparer with respect to returns or claims for refund filed during any calendar year shall not exceed \$25,000. The Division of Revenue may use an amount equal to the total penalties collected under this section to regulate paid tax preparers, including, without limitation, commencing actions permitted under Section 549 of this Title.

Section 3. Amend Subchapter III, Chapter 5, of Title 30 of the Delaware Code by making deletions as shown by strike through, insertions as shown by underline and redesignating as follows:

§ 548 Paid tax preparers; required information on returns and claims for refund.

Any return or claim for refund prepared by a paid tax preparer, as that term is defined under § 502(b) in this Title, shall be signed by the paid tax preparer and shall bear the paid tax preparer's tax identification number.

§ 549 Suit to enjoin certain paid tax preparers.

(a) In a court of competent jurisdiction, the Director of Revenue may commence suit to enjoin any paid tax preparer, as that term is defined under § 502(b) of this title, from further engaging in any conduct described in subsection (b) of this section or from further acting as a paid tax preparer. If the court issues an injunction under this section, the paid tax preparer shall reimburse the Division of Revenue for all costs and fees incurred in prosecuting such case.

(b) In any action under subsection (a) of this section, the court may enjoin the tax preparer from further engaging in any conduct specified in this subsection (b) if the court finds that injunctive relief is appropriate to prevent the recurrence of this conduct. The court may issue an injunction when the paid tax preparer has done any of the following:

(1) Prepared any return or claim for refund that includes an understatement of a taxpayer's liability due to an unreasonable position.

(2) Prepared any return or claim for refund that includes an understatement of a taxpayer's liability due to willful or reckless conduct.

(3) Where required, do any of the following:

a. failed to furnish a copy of a return or claim for refund.

b. failed to sign a return or claim for refund.

c. failed to furnish an identifying number.

d. failed to retain a copy of records.

e. failed to file correct information returns.

f. failed to determine eligibility for tax benefits.

(4) Negotiated a check issued to a taxpayer by the Division of Revenue without the permission of the taxpayer.

(5) Engaged in any conduct subject to any criminal penalty provided in this Title.

(6) Misrepresented the paid tax preparer's eligibility to practice before the Division of Revenue or otherwise misrepresented the paid tax preparer's experience or education.

(7) Guaranteed the payment of any tax refund or the allowance of any tax credit.

(8) Engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws of this state.

(c) If the court finds that a paid tax preparer has continually or repeatedly engaged in any conduct prohibited in subsection (b) of this section and that an injunction prohibiting the conduct would not be sufficient to prevent the person's interference with the proper administration of the tax laws of Delaware, the court may enjoin the person from acting as a paid tax preparer in Delaware. The fact that a person has been enjoined from preparing tax returns or claims for refund for the United States or any other state, in the five years preceding the petition for an injunction shall establish a prima facie case for an injunction to be issued pursuant to this Section.

Section 4. If any provision of this Act or the application of this Act to any person or circumstance is held invalid, the provisions of this Act are severable if the invalidity does not affect the other provisions of this Act that can be given effect without the invalid provision or the application of this Act that can be given effect without the invalid application.

Section 5. This Act shall be effective upon enactment.