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HOUSE BILL NO. 788

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact § 58.1-348.2 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-348.3 and 58.1-348.4, relating to requirements that paid tax return preparers use identification numbers; civil penalty.

Patron—Keam

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-348.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-348.3 and 58.1-348.4 as follows:

§ 58.1-348.2. Authority to enjoin income tax return preparers.

A. The Department may commence a civil action to enjoin any person who is an income tax return preparer from further engaging in any conduct described in subsection B or from further action as an income tax return preparer. The venue for any action under this section shall be brought in the circuit court in the circuit where the income tax return preparer resides or has his principal place of business or in the jurisdiction in which the taxpayer with respect to whose income tax return the action is brought resides. The court may exercise its jurisdiction over such action separate and apart from any other administrative or judicial action brought by the Commonwealth against such income tax return preparer or any taxpayer.

B. In any action under subsection A, the court may enjoin the income tax return preparer from further engaging in any conduct specified in this subsection if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct. The court may enjoin conduct when an income tax return preparer has:

1. Engaged in any conduct subject to penalty under § 6694 or 6695 of the Internal Revenue Code, or subject to any criminal penalty provided by the Internal Revenue Code or this title; or

2. Engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws of the Commonwealth.

C. If the court finds that an income tax return preparer has continually or repeatedly engaged in any conduct described in subsection B and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of the tax laws of the Commonwealth, the court may enjoin such person from acting as an income tax return preparer. The fact that that person has been enjoined from preparing income tax returns 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 under this section.

D. 1. The Department may bar or suspend any income tax return preparer, without resort to the injunctive remedies described in this section, from filing returns with the Department for repeated violations of § 58.1-348.4. Such disbarment or suspension shall be subject to appeal pursuant to the procedures described in subdivision D 2.

2. a. Any income tax preparer barred or suspended pursuant to subdivision D 1 may, within 30 days from the date of such barring or suspension, apply for relief to the Commissioner or appeal directly to the Circuit Court of the City of Richmond. Such application shall be in the form prescribed by the Department, and shall fully set forth the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention. The Commissioner may also require such additional information, testimony, or documentary evidence as he deems necessary to a fair determination of the application.

b. Any income tax preparer barred or suspended against whom an order or decision of the Commissioner has been adversely rendered pursuant to subdivision D 2 a may, within fifteen days of such order or decision, appeal from such order or decision to the Circuit Court of the City of Richmond.

c. Any income tax preparer barred or suspended shall not file any Virginia income tax returns pending application for relief to the Commissioner and appeal to the Circuit Court of the City of Richmond.

§ 58.1-348.3. Requirement that income tax return preparers use identification numbers.

A. As used in this section, "PTIN" means the Preparer Tax Identification Number that the Internal Revenue Service uses to identify tax return preparers pursuant to 26 U.S.C. § 6109.

B. For taxable years beginning on and after January 1, 2019, the Department shall require any

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59 income tax return preparer to include his PTIN on any tax return that he prepares or assists in
60 preparing.

61 C. The Department shall promulgate regulations for using the PTIN as an oversight mechanism to
62 assess returns and to identify high error rates, patterns of suspected fraud, and unsubstantiated bases
63 for tax positions by income tax return preparers.

64 D. 1. The Department shall establish formal and regular communication protocols with the Internal
65 Revenue Service to share and exchange PTIN information on income tax return preparers who are
66 suspected of fraud, who are disciplined, or who are barred from filing tax returns with the Department
67 or the Internal Revenue Service.

68 2. The Department may establish communication protocols with other states to exchange the
69 enforcement and discipline information described in subdivision D 1.

70 3. Notwithstanding the provisions of § 58.1-3 or any other provision of this title, the Department is
71 authorized to provide to the Internal Revenue Service and other state tax or revenue agencies for their
72 confidential use preparer and return data, including PTIN information, taxpayer names, taxpayer
73 identification numbers, and other information as necessary to enforce the provisions of this section and
74 §§ 58.1-348.2 and 58.1-348.4.

75 E. The failure of an income tax return preparer to include his PTIN on a tax return shall not be
76 used by the Department as a basis for rejecting such return as improperly filed.

77 **§ 58.1-348.4. Failure to provide identification number; civil penalty.**

78 A. No income tax return preparer may provide tax preparation services for Virginia income tax
79 returns unless he provides his PTIN, as defined in § 58.1-348.3, when submitting a return and signing
80 as an income tax return preparer.

81 B. In addition to all other penalties provided by law, any person who violates subsection A shall pay
82 a civil penalty to the Department in the amount of \$50 per offense, but not to exceed \$25,000 per
83 calendar year. No penalty shall be imposed if the violation is reasonable and unintentional as
84 determined by the Department.