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Tax Refund or Return Preparer Penalty

Introduction

Under Minnesota law, penalties may be assessed not only against a person who willfully attempts to understate his or her own tax liability, but also against a person who prepares returns for another and willfully attempts to understate that person's tax liability.

Definition of Preparer

The definition of a "tax refund or return preparer" (preparer) is found in Minnesota Statutes, § 289A.60, subdivision 13(g). A preparer is "an individual who prepares for compensation, or who employs one or more individuals to prepare for compensation, a return of tax, or a claim for refund of tax." A "return of tax, or a claim for refund of tax" is any return or claim filed with the Minnesota Department of Revenue. In addition to returns or claims for refunds for the other tax types administered under Chapter 289A, this includes sales tax returns or claims for refunds of sales tax.

Civil Monetary Penalties

Under Minnesota Statutes, § 289A.60, subdivision 13(a), a preparer is subject to a penalty of \$500 if the preparer willfully attempts in any manner to understate a tax liability. The penalty will be assessed and treated as an individual income tax liability of the preparer.

Civil Injunctions

In addition to imposing civil monetary penalties, under Minnesota Statutes, § 289A.60, subdivision 13(b), the State of Minnesota may commence legal action to enjoin a preparer from engaging in any of the following conduct:

conduct which is subject to a civil penalty under Minnesota Statutes, § 289A.60 or a criminal penalty under Minnesota Statutes, § 289A.63;

misrepresenting the preparer's eligibility to practice before the Department of Revenue, or otherwise misrepresenting the preparer's experience or education as a tax return preparer;

guaranteeing the payment of any tax refund or the allowance of any tax credit; or

other fraudulent or deceptive conduct that substantially interferes with the proper administration of state tax law when injunctive relief is appropriate to prevent the recurrence of that conduct.

Finally, if the court determines that a tax return preparer has continually engaged in the above conduct and that an injunction prohibiting the specific conduct would be insufficient to prevent the preparer's interference with state tax laws, the court may enjoin that person from acting as a tax preparer in Minnesota altogether.

Dated: 9 August 1999

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