



Ohio Revised Code

Section 5703.263 Prohibited conduct by tax preparer; power of commissioner.

Effective: October 17, 2019

Legislation: House Bill 166 - 133rd General Assembly

(A)(1) "Tax return preparer" means any person other than an accountant or an attorney that operates a business that prepares, or directly or indirectly employs another person to prepare, for a taxpayer a tax return or application for refund in exchange for compensation or remuneration from the taxpayer or the taxpayer's related member. The preparation of a substantial portion of a tax return or application for refund shall be considered to be the same as the preparation of the return or application for refund. "Tax return preparer" does not include an individual who performs only one or more of the following activities:

- (a) Furnishes typing, reproducing, or other mechanical assistance;
 - (b) Prepares an application for refund or a return on behalf of an employer by whom the individual is regularly and continuously employed, or on behalf of an officer or employee of that employer;
 - (c) Prepares as a fiduciary an application for refund or a return;
 - (d) Prepares an application for refund or a return for a taxpayer in response to a notice of deficiency issued to the taxpayer or the taxpayer's related member, or in response to a waiver of restriction after the commencement of an audit of the taxpayer or the taxpayer's related member.
- (2) "Related member" has the same meaning as in section 5733.042 of the Revised Code.
- (3) "Accountant" means any of the following:
- (a) An individual who holds both a CPA certificate and an Ohio permit or Ohio registration issued by the accountancy board under section 4701.10 of the Revised Code;
 - (b) An individual who holds a foreign certificate;



(c) An individual who is employed by a public accounting firm with respect to any return prepared under the supervision of an individual described in division (A)(3)(a) or (b) of this section, regardless of whether the public accounting firm is required to register with the accountancy board under section 4701.04 of the Revised Code.

(4) "CPA certificate" and "foreign certificate" have the same meanings as in section 4701.01 of the Revised Code.

(5) "Attorney" means an individual who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, is permitted to practice as an attorney and counselor at law in this state under Chapter 4705. of the Revised Code, and is not currently suspended or removed from such practice under that chapter.

(6) A tax return preparer engages in "prohibited conduct" if the preparer does any of the following:

(a) Prepares any return or application for refund that includes an understatement of a taxpayer's tax liability due to an unreasonable position or due to willful or reckless conduct. For the purposes of this division, "unreasonable position" and "willful or reckless conduct" have the meanings as used in section 6694 of the Internal Revenue Code.

(b) When required under any provision of Title LVII of the Revised Code, the preparer fails to do any of the following:

(i) Provide copies of a return or application for refund;

(ii) Provide the preparer's signature or federal preparer tax identification number on a return or application for refund;

(iii) Retain copies of the preparer's records;

(iv) Provide any information or documents requested by the tax commissioner;

(v) Act diligently in determining a taxpayer's eligibility for tax credits, deductions, or exemptions.



(c) Negotiates a check or other negotiable instrument issued to a taxpayer by the department of taxation without the permission of the taxpayer;

(d) Engages in any conduct subject to criminal penalties under Title LVII of the Revised Code;

(e) Misrepresents the preparer's eligibility to file returns or applications for refund on behalf of taxpayers, or otherwise misrepresents the preparer's experience or education;

(f) Guarantees the payment of any tax refund or the allowance of any tax credit, deduction, or exemption;

(g) Engages in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of any provision of Title LVII of the Revised Code.

(7) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

(B) When a tax return preparer engages in prohibited conduct, the commissioner, may do either or both of the following:

(1) If the commissioner has previously warned the tax return preparer in writing of the consequences of continuing to engage in prohibited conduct, impose a penalty not exceeding one hundred dollars per instance of prohibited conduct;

(2) Regardless of whether the commissioner has previously warned the tax return preparer, request that the attorney general apply to a court of competent jurisdiction for an injunction to restrain the preparer from further engaging in the prohibited conduct. The court may take either of the following actions:

(a) If the court finds that injunctive relief is appropriate to prevent the recurrence of the prohibited conduct, the court shall issue an injunction against the preparer enjoining the preparer from engaging in such conduct.



(b) If the court finds that the preparer has continually or repeatedly engaged in prohibited conduct, and that enjoining the preparer solely from engaging in such conduct would not be sufficient to prevent the preparer's interference with the proper administration of any provision of Title LVII of the Revised Code, the court may issue an injunction against the preparer enjoining the preparer from acting as a tax return preparer in this state.

If a tax return preparer has been enjoined from preparing tax returns or applications for refunds by a federal court or by another state court in the five years preceding the date on which an injunction is requested under this section, that prior injunction shall be sufficient to establish a prima facie case for the issuance of an injunction under division (B)(2) of this section.

(C) The commissioner may require a tax return preparer to include the preparer's name and federal preparer tax identification number when filing any return or application for refund. If a tax return preparer fails to include this information when required to do so by the commissioner, or if the information provided is false, inaccurate, or incomplete, the commissioner may impose a penalty of fifty dollars for each such failure, provided that the maximum penalty imposed on a preparer under this division in a calendar year shall not exceed twenty-five thousand dollars.

(D) The penalties imposed under divisions (B)(1) and (C) of this section may be assessed and collected in the same manner as assessments made under Chapter 3769., 4305., 5727., 5728., 5733., 5735., 5736., 5739., 5743., 5745., 5747., 5749., 5751., or 5753., section 718.90, or sections 3734.90 to 3734.9014 of the Revised Code. The commissioner may abate all or a portion of any penalty imposed under this section upon the showing of good cause by the tax return preparer.