

**Illinois Department of Revenue  
Regulations**

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| <b>Title 86 Part 100 Section 100.9910 State Tax Preparer Oversight Act<br/>[35 ILCS 35]</b> |
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**TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE  
PART 100**

**Section 100.9910 State Tax Preparer Oversight Act [35 ILCS 35]**

a) Definitions

1) Income Tax Return Preparer

A) The term "income tax return preparer" means *any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by the IITA or any claim for refund of tax imposed by the IITA. The preparation of a substantial portion of a return or claim for refund shall be treated as the preparation of that return or claim for refund.* (IITA Section 1501(a)(26)(A))

B) *A person is not an income tax return preparer if all he or she does is the following:*

- i) *furnish typing, reproducing, or other mechanical assistance;*
- ii) *prepare returns or claims for refunds of the employer by whom he or she is regularly and continuously employed;*
- iii) *prepare as a fiduciary returns or claims for refunds for any person; or*
- iv) *prepare claims for refunds for a taxpayer in response to a notice of deficiency issued to that taxpayer or in response to any waiver of restriction after the commencement of an audit of that taxpayer or of another taxpayer if a determination in the audit of the other taxpayer directly or indirectly affects the tax liability of the taxpayer whose claims he or she is preparing.* (IITA Section 1501(a)(26)(B))

- 2) PTIN. Section 5 of the State Tax Preparer Oversight Act (STPOA) provides that the term "Preparer Tax Identification Number" or "PTIN" means the identifying number required under 26 CFR 1.6109-2(d). (STPOA Section 5)
  - 3) EIN. The term "Employer Identification Number" or "EIN" means the identifying number assigned to an employer under 26 CFR 31.6011(b)-1.
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- b) Requirement to Sign Return. *If a return required under the IITA is prepared by an income tax return preparer for a taxpayer, that preparer shall sign the return as preparer of that return.* (IITA Section 503) This requirement shall apply only to the preparer who would be considered the "signing tax return preparer" with respect to the return by applying the provisions of 26 CFR 301.7701-15. In addition, if there is an employment relationship or association between the individual required to sign a return under this subsection and another person, the signature of that other person must be included on the filed return when required by Department forms.
  - c) Requirement to Include PTIN. *For taxable years beginning on or after January 1, 2017, any income tax return preparer must include his or her PTIN on any tax return prepared by the income tax return preparer and filed under the IITA or any claim for refund of tax imposed by the IITA.* (STPOA Section 10) This requirement shall apply only to the preparer who would be considered the "signing tax return preparer" with respect to the return or claim for refund by applying the provisions of 26 CFR 301.7701-15(b)(1), and only with respect to an income tax return preparer who holds an active PTIN at the time of filing the Illinois return or claim for refund.
  - d) Requirement to Include EIN. If there is an employment relationship or association between the individual required to sign a return under subsection (b) and another person, the name and EIN of that other person must be included on the filed return or claim for refund when required by Department forms.
  - e) Oversight Program. The Department will use the PTIN information required to be included on a filed return or claim for refund under subsection (c) for purposes of administering the enforcement provisions of subsection (f). The PTIN information allows the Department to identify preparers who prepare fraudulent or otherwise erroneous returns, and returns reflecting unsubstantiated tax positions. *The Department will share and exchange PTIN information with the Internal Revenue Service on income tax return preparers who are suspected of fraud, disciplined, or barred from filing tax returns with the Department or the Internal Revenue Service.* (STPOA Section 10) The Department will share similar enforcement or discipline information with other states.
  - f) Enforcement

- 1) **Misconduct Investigations.** *The Department may investigate the actions of any income tax return preparer doing business in the State and may bar or suspend an income tax return preparer from filing returns with the Department for good cause. (STPOA Section 15) Good cause to bar or suspend an income tax return preparer may be found when a preparer engages in conduct described in 26 USC 7407(b)(1) (other than conduct subject to penalty under 26 USC 6695(a) (failure to provide the taxpayer with a copy of the return), (d) (failure to retain copies or lists of returns prepared by the preparer), (e) (failure to correct information returns) and (f) (negotiation of checks issued to taxpayers)), as if 26 USC 7407(b)(1) applied for purposes of the IITA.*
  
- 2) **Misconduct Hearings.** *Prior to imposing the enforcement provisions of subsection (f)(1), the Department will hold a hearing as provided in this subsection (f)(2). The Department shall, at least 30 days before the date set for the hearing: notify the accused in writing of the charges made and the time and place for the hearing on the charges; direct him or her to file a written answer to the charges with the Department under oath within 20 days after the service on him or her of the notice; and inform the accused that, if he or she fails to answer, disciplinary action shall be taken against him or her, as the Department may consider proper. At the time and place fixed in the notice, the Department shall proceed to hear the charges and the parties or their counsel shall be accorded ample opportunity to present any pertinent statements, testimony, evidence, and arguments. The Department may continue the hearing from time to time. In the case the person, after receiving the notice, fails to file an answer, he or she may be subject to the disciplinary action set forth in the notice. The written notice may be served by registered or certified mail to the person's address of record. All final administrative decisions of the Department under this Section shall be subject to judicial review pursuant to the Administrative Review Law [735 ILCS 5/Art. III]. The term "administrative decision" shall have the meaning ascribed in Section 3-101 of that Law. Proceedings for judicial review shall be commenced in the Circuit Court of the county in which the party applying for review resides; provided that, if the party is not a resident of this State, the venue shall be in Sangamon or Cook County. (STPOA Section 15)*
  
- 3) **Penalty for Omitting PTIN**
  - A) *In addition to any other penalty provided by law, any individual violating the STPOA by failing to provide his or her PTIN shall pay a civil penalty to the Department in the amount of \$50 per offense, but not to exceed \$25,000 per calendar year; however, no such penalty shall be imposed if it is shown that the failure is due to reasonable cause and not due to willful neglect, as determined by the Department. (STPOA Section 15(a)) The penalty under this*

subsection (f)(3)(A) shall apply only with respect to an income tax return preparer who holds an active PTIN at the time of filing the Illinois return or claim for refund. The penalty does not apply to an income tax return preparer who does not have an active PTIN, whether or not the preparer is required to obtain a PTIN. Reasonable cause shall be determined under the standards set forth in 86 Ill. Adm. Code 700.400. The penalty imposed under this subsection (f)(3)(A) shall not be considered tax imposed under the IITA.

- B) The Department shall issue a notice of penalty liability for the amount claimed by the Department determined pursuant to subsection (f)(3)(A). Procedures for protest and review of a notice of penalty liability issued pursuant to this subsection (f)(3)(B) and assessment of the penalty due under this subsection (f)(3)(B) shall be the same as those prescribed for protest and review of a notice of deficiency set forth in IITA Section 908.

(Source: Added at 41 Ill. Reg. 6379, effective May 22, 2017)