

HOUSE BILL No. 2466

By Committee on Taxation

1-22

1 AN ACT concerning income taxation; enacting the Kansas taxpayer
2 protection act; relating to paid tax return preparers; requiring a
3 signature and tax identification number on returns and claims;
4 authorizing actions by the secretary of revenue to enjoin certain
5 conduct.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. The provisions of sections 1 through 6, and amendments
9 thereto, shall be known and may be cited as the Kansas taxpayer protection
10 act.

11 Sec. 2. As used in this act:

12 (a) (1) "Paid tax return preparer" means any person who prepares or
13 substantially prepares for compensation, or who employs one or more
14 persons who prepare or substantially prepare for compensation, any
15 income tax return or claim for refund, required to be filed pursuant to
16 K.S.A. 79-3201 et seq., and amendments thereto.

17 (2) "Paid tax return preparer" does not include the following:

18 (A) An individual licensed as a certified public accountant in this
19 state under K.S.A. 1-302b or 1-322, and amendments thereto;

20 (B) an individual licensed as a certified public accountant in another
21 licensing jurisdiction and practicing in this state under K.S.A. 1-302b or 1-
22 322, and amendments thereto; or

23 (C) an individual employed by a firm licensed in this state under
24 K.S.A. 1-308, and amendments thereto, and preparing a return under the
25 supervision of an individual described in subparagraph (A) or (B).

26 (b) "Secretary" means secretary of the Kansas department of revenue.

27 Sec. 3. (a) On and after January 1, 2021, any income tax return or
28 claim for refund prepared or substantially prepared by a paid tax return
29 preparer shall be signed by the paid tax return preparer and shall bear the
30 paid tax return preparer's federal internal revenue service preparer tax
31 identification number. Any paid tax return preparer who fails to sign the
32 income tax return or claim for refund or who fails to provide the preparer's
33 federal internal revenue service preparer tax identification number shall
34 pay a civil penalty of \$50 for each such failure to the Kansas department
35 of revenue, unless it can be shown that the failure was due to reasonable
36 cause and not willful or reckless conduct. The penalty imposed on any

1 paid tax return preparer with respect to returns or claims for refund filed
2 during any calendar year shall not exceed \$25,000 per paid tax return
3 preparer.

4 (b) The penalty shall be imposed pursuant to this section upon the
5 written order of the secretary or the secretary's designee to the paid tax
6 return preparer who committed the violation. Such order shall state the
7 violation, the penalty to be imposed and the right of the paid tax return
8 preparer to appeal the order. Such order shall be subject to appeal and
9 review in the manner provided by the Kansas administrative procedure act.

10 (c) Any penalty collected pursuant to this section shall be remitted to
11 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
12 and amendments thereto. Upon receipt of each such remittance, the state
13 treasurer shall deposit the entire amount in the state treasury to the credit
14 of the state general fund.

15 Sec. 4. (a) The secretary or the secretary's designee is hereby
16 authorized to enjoin any person from engaging in conduct described in
17 subsection (b) or from further action as a paid tax return preparer under the
18 provisions of the Kansas taxpayer protection act who is found to be in
19 violation of this act. The secretary or the secretary's designee shall be
20 entitled in any proceeding brought for such purpose to have an order
21 restraining such person from engaging in conduct in violation of the
22 provisions of this act. No bond shall be required for any such restraining
23 order or for any temporary or permanent injunction issued in such
24 proceedings. The secretary may commence suit in a court of competent
25 jurisdiction to enjoin any paid tax return preparer from further engaging in
26 any conduct described in subsection (b) or from further action as a paid tax
27 return preparer in this state. The secretary may request the assistance of the
28 attorney general or the attorney general's duly authorized designee to
29 enforce provisions of this section.

30 (b) In an action pursuant to subsection (a), the court may enjoin the
31 paid tax return preparer from further engaging in any conduct described in
32 this subsection, if the court finds that injunctive relief is appropriate to
33 prevent the occurrence of such conduct. The court may issue an injunction
34 when the paid tax return preparer has engaged in any of the following
35 conduct:

36 (1) Prepared any income tax return or claim for refund that includes
37 an understatement of a taxpayer's liability due to an unreasonable position.
38 As used in this subsection, "unreasonable position" means the same as
39 defined by section 6694(a)(2) of the federal internal revenue code;

40 (2) prepared any income tax return or claim for refund that includes
41 an understatement of a taxpayer's liability due to the paid tax return
42 preparer's willful or reckless conduct. As used in this subsection, "willful
43 or reckless conduct" means the same as defined by section 6694(b)(2) of

1 the federal internal revenue code;

2 (3) where required, failed to do any of the following:

3 (A) Furnish a copy of the income tax return or claim for refund;

4 (B) sign the income tax return or claim for refund;

5 (C) furnish an identifying number;

6 (D) retain a copy of the income tax return or claim for refund; or

7 (E) be diligent in determining eligibility for tax benefits;

8 (4) negotiated a check issued to the taxpayer by the department of
9 revenue without the permission of the taxpayer;

10 (5) engaged in any conduct subject to any criminal penalty provided
11 for in chapter 79 of the Kansas Statutes Annotated, and amendments
12 thereto;

13 (6) misrepresented the paid tax return preparer's eligibility to practice
14 before the department of revenue or otherwise misrepresented the paid tax
15 return preparer's experience or education;

16 (7) guaranteed the payment of any income tax refund or the
17 allowance of any income tax credit; or

18 (8) engaged in any other fraudulent or deceptive conduct that
19 substantially interferes with the proper administration of the tax laws of
20 the state of Kansas.

21 (c) If the court finds that a paid tax return preparer has continually or
22 repeatedly engaged in any conduct described in subsection (b) and that an
23 injunction prohibiting the conduct would not be sufficient to prevent the
24 person's interference with the proper administration of the tax laws of the
25 state of Kansas, the court may enjoin the person from acting as a paid tax
26 return preparer in the state of Kansas. The fact that the person has been
27 enjoined from preparing tax returns or claims for refund for the United
28 States or any other state in the five years preceding the petition for an
29 injunction shall establish a prima facie case for an injunction to be issued
30 pursuant to this section. For purposes of this subsection, "state" means a
31 state of the United States, the District of Columbia, Puerto Rico, the
32 United States Virgin Islands or any territory or insular possession subject
33 to the jurisdiction of the United States.

34 (d) The secretary or the secretary's designee shall annually report a
35 summary of the secretary's enjoinder actions on the department of
36 revenue's website.

37 Sec. 5. (a) Preparation or substantial preparation of any income tax
38 return or claim for refund filed pursuant to K.S.A. 79-3201 et seq., and
39 amendments thereto, by a paid tax return preparer, whether or not a
40 resident or citizen of this state, thereby submits the preparer to the
41 jurisdiction of the courts of this state as to any cause of action arising from
42 the provisions of this act.

43 (b) Every action pursuant to this act shall be brought in the district

1 court of Shawnee county.

2 (c) In lieu of initiating or continuing an action or proceeding, the
3 secretary or the secretary's designee may accept a consent judgment with
4 respect to any act or practice declared to be a violation of this act. A
5 consent judgment shall provide for the discontinuance by the paid tax
6 return preparer entering the same of any act or practice declared to be a
7 violation of this act. Any consent judgment entered into pursuant to this
8 section shall not be deemed to admit the violation, unless it does so by its
9 terms. Before any consent judgment entered into pursuant to this section
10 shall be effective, it shall be approved by the district court and an entry
11 made in the manner required for making an entry of judgment. Once such
12 approval is received, any breach of the conditions of such consent
13 judgment shall be treated as a violation of a court order and shall be
14 subject to all the penalties provided by law.

15 Sec. 6. The secretary may adopt rules and regulations necessary to
16 carry out the provisions of the Kansas taxpayer protection act.

17 Sec. 7. This act shall take effect and be in force from and after its
18 publication in the statute book.