

HOUSE BILL No. 2466

By Committee on Taxation

1-22

1 AN ACT concerning ~~income~~ taxation; ***relating to income and privilege***
2 ***taxes***; enacting the Kansas taxpayer protection act~~s~~, relating to paid tax
3 return preparers~~s~~, requiring a signature and tax identification number on
4 returns and claims~~s~~; ***and*** authorizing actions by the secretary of revenue
5 to enjoin certain conduct; ***extending certain return filing and tax***
6 ***payment deadlines; amending K.S.A. 79-1110, 79-3221 and 79-3225***
7 ***and repealing the existing sections.***

8
9 *Be it enacted by the Legislature of the State of Kansas:*

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

13 ***New*** Sec. 2. As used in this act:

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

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

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

22 (B) an individual licensed as a certified public accountant in another
23 licensing jurisdiction and practicing in this state under K.S.A. 1-302b or 1-
24 322, and amendments thereto; or

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

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

29 ***New*** Sec. 3. (a) On and after January 1, 2021, any income tax return
30 or claim for refund prepared or substantially prepared by a paid tax return
31 preparer shall be signed by the paid tax return preparer and shall bear the
32 paid tax return preparer's federal internal revenue service preparer tax
33 identification number. Any paid tax return preparer who fails to sign the
34 income tax return or claim for refund or who fails to provide the preparer's
35 federal internal revenue service preparer tax identification number shall
36 pay a civil penalty of \$50 for each such failure to the Kansas department

1 of revenue, unless it can be shown that the failure was due to reasonable
2 cause and not willful or reckless conduct. The penalty imposed on any
3 paid tax return preparer with respect to returns or claims for refund filed
4 during any calendar year shall not exceed \$25,000 per paid tax return
5 preparer.

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

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

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

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

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

42 (2) prepared any income tax return or claim for refund that includes
43 an understatement of a taxpayer's liability due to the paid tax return

1 preparer's willful or reckless conduct. As used in this subsection, "willful
2 or reckless conduct" means the same as defined by section 6694(b)(2) of
3 the federal internal revenue code;

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

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

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

7 (C) furnish an identifying number;

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

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

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

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

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

18 (7) guaranteed the payment of any income tax refund or the
19 allowance of any income tax credit; or

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

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

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

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

1 the provisions of this act.

2 (b) Every action pursuant to this act shall be brought in the district
3 court of Shawnee county.

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

17 *New* Sec. 6. The secretary may adopt rules and regulations necessary
18 to carry out the provisions of the Kansas taxpayer protection act.

19 *Sec. 7. K.S.A. 79-1110 is hereby amended to read as follows: 79-*
20 *1110. (a) Every national banking association, bank, trust company, and*
21 *savings and loan association subject to taxation under this act shall*
22 *make its return and pay the tax imposed to the director of taxation on or*
23 *before the 15th day of the fourth month following the close of its federal*
24 *taxable year, in the same manner, except for computing the net income*
25 *subject to tax, as corporations are required to make their returns and*
26 *pay their taxes under the Kansas income tax act. Every such national*
27 *banking association, bank, trust company and savings and loan*
28 *association shall be subject to other provisions of the Kansas income tax*
29 *act applicable to other corporations and shall be subject to the penalties*
30 *imposed on corporations by K.S.A. 79-3222, 79-3228 and 79-3234*
31 *insofar as the same can be made applicable.*

32 (b) *With respect to tax year 2019, the deadline for filing returns shall*
33 *be extended to July 15, 2020, for returns with original due dates of April*
34 *15, 2020, through July 15, 2020. With respect to tax year 2019, no penalty*
35 *or interest authorized pursuant to K.S.A. 79-3228, and amendments*
36 *thereto, shall be imposed if such tax liability is paid on or before July 15,*
37 *2020.*

38 *Sec. 8. K.S.A. 79-3221 is hereby amended to read as follows: 79-*
39 *3221. (a) All returns required by this act shall be made as nearly as*
40 *practical in the same form as the corresponding form of income tax*
41 *return by the United States. Unless another identifying number has been*
42 *assigned to an individual by the internal revenue service for purposes of*
43 *filing such individual's federal income tax return, the social security*

1 *number issued to an individual, the individual's spouse, and all*
2 *dependents of such individual for purposes of section 205 (c)(2)(A) of*
3 *the social security act shall be used as the identifying number and*
4 *included on the return when filing such return.*

5 *(b) All returns shall be filed in the office of the director of taxation*
6 *on or before the 15th day of the fourth month following the close of the*
7 *taxable year, except as provided in subsection (c)—hereof. Tentative*
8 *returns may be filed before the close of the taxable year and the*
9 *estimated tax computed on such return, paid, but no interest will be paid*
10 *on any overpayment of tax liability, computed on such tentative return.*

11 *(c) (1) The director of taxation may grant a reasonable extension of*
12 *time for filing returns in accordance with rules and regulations of the*
13 *secretary of revenue. Whenever any such extension of time to file is*
14 *requested by a taxpayer and granted by the director with respect to any*
15 *tax year commencing after December 31, 1992, no penalty authorized by*
16 *K.S.A. 79-3228, and amendments thereto, shall be imposed if 90% of the*
17 *liability is paid on or before the original due date.*

18 *(2) With respect to tax year 2019, the deadline for filing returns shall*
19 *be extended to July 15, 2020, for returns with original due dates of April*
20 *15, 2020, through July 15, 2020. With respect to tax year 2019, no penalty*
21 *or interest authorized pursuant to K.S.A. 79-3228, and amendments*
22 *thereto, shall be imposed if such tax liability is paid on or before July 15,*
23 *2020.*

24 *(d) In the case of an individual serving in the armed forces of the*
25 *United States, or serving in support of such armed forces, in an area*
26 *designated by the president of the United States by executive order as a*
27 *"combat zone" as defined under 26 U.S.C. § 112 at any time during the*
28 *period designated by the president by executive order as the period of*
29 *combatant activities in such zone for the purposes of such section, or*
30 *hospitalized as a result of injury received or sickness incurred while*
31 *serving in such an area during such time, the period of service in such*
32 *area, plus the period of continuous qualified hospitalization attributable*
33 *to such injury or sickness, and the next 180 days thereafter, shall be*
34 *disregarded in determining, under article 32 of chapter 79 of the Kansas*
35 *Statutes Annotated, and amendments thereto, in respect to any tax*
36 *liability, including any interest, penalty, additional amount, or addition*
37 *to the tax, of such individual:*

38 *(1) Whether any of the following acts was performed within the*
39 *time prescribed therefor: (A) Filing any return of income tax; (B)*
40 *payment of any income tax or installment thereof; (C) filing a notice of*
41 *appeal with the director of taxation or the state board of tax appeals for*
42 *redetermination of a deficiency or for a review of a decision rendered by*
43 *either the director or the state board of tax appeals; (D) allowance of a*

1 *credit or refund of any income tax; (E) filing a claim for credit or refund*
2 *of any income tax; (F) bringing suit upon any such claim for credit or*
3 *refund; (G) assessment of any income tax; (H) giving or making any*
4 *notice or demand for the payment of any income tax, or with respect to*
5 *any liability to the state of Kansas in respect of any income tax; (I)*
6 *collection, by the director of taxation or the director's agent, by warrant,*
7 *levy or otherwise, of the amount of any liability in respect to any income*
8 *tax; (J) bringing suit by the state of Kansas, or any officer on its behalf,*
9 *in respect to any liability in respect of any income tax; and (K) any other*
10 *act required or permitted under the Kansas income tax act specified in*
11 *rules and regulations adopted by the secretary of revenue under this*
12 *section;*

13 *(2) the amount of any credit or refund.*

14 *(e) (1) Subsection (d) shall not apply for purposes of determining*
15 *the amount of interest on any overpayment of tax.*

16 *(2) If an individual is entitled to the benefits of subsection (d) with*
17 *respect to any return and such return is timely filed, determined after the*
18 *application of ~~subsection (d), subsections (e)(5) and (e)(7) of K.S.A. 79-~~*
19 *32,105(d), (e)(5) and (e)(7), and amendments thereto, shall not apply.*

20 *(f) The provisions of subsections (d) through (j) shall apply to the*
21 *spouse of any individual entitled to the benefits of subsection (d). Except*
22 *in the case of the combat zone designated for purposes of the Vietnam*
23 *conflict, this subsection shall not cause subsections (d) through (j) to*
24 *apply for any spouse for any taxable year beginning more than two years*
25 *after the date designated under 26 U.S.C. § 112, and amendments*
26 *thereto, as the date of termination of combatant activities in a combat*
27 *zone.*

28 *(g) The period of service in the area referred to in subsection (d)*
29 *shall include the period during which an individual entitled to benefits*
30 *under subsection (d) is in a missing status, within the meaning of 26*
31 *U.S.C. § 6013(f)(3).*

32 *(h) (1) Notwithstanding the provisions of subsection (d), any action*
33 *or proceeding authorized by K.S.A. 79-3229, and amendments thereto,*
34 *as well as any other action or proceeding authorized by law in*
35 *connection therewith, may be taken, begun or prosecuted. In any other*
36 *case in which the secretary determines that collection of the amount of*
37 *any assessment would be jeopardized by delay, the provisions of*
38 *subsection (d) shall not operate to stay collection of such amount by levy*
39 *or otherwise as authorized by law. There shall be excluded from any*
40 *amount assessed or collected pursuant to this subsection the amount of*
41 *interest, penalty, additional amount, and addition to the tax, if any, in*
42 *respect of the period disregarded under subsection (d). In any case to*
43 *which this ~~subsections~~ subsection relates, if the secretary is required to*

1 *give any notice to or make any demand upon any person, such*
2 *requirement shall be deemed to be satisfied if the notice or demand is*
3 *prepared and signed, in any case in which the address of such person*
4 *last known to the secretary is in an area for which United States post*
5 *offices under instructions of the postmaster general are not, by reason of*
6 *the combatant activities, accepting mail for delivery at the time the*
7 *notice or demand is signed. In such case the notice or demand shall be*
8 *deemed to have been given or made upon the date it is signed.*

9 *(2) The assessment or collection of any tax under the provisions of*
10 *article 32 of chapter 79 of the Kansas Statutes Annotated, and*
11 *amendments thereto, or any action or proceeding by or on behalf of the*
12 *state in connection therewith, may be made, taken, begun or prosecuted*
13 *in accordance with law, without regard to the provisions of subsection*
14 *(d), unless prior to such assessment, collection, action or proceeding it is*
15 *ascertained that the person concerned is entitled to the benefits of*
16 *subsection (d).*

17 *(i) (1) Any individual who performed Desert Shield services, and*
18 *the spouse of such individual, shall be entitled to the benefits of*
19 *subsections (d) through (j) in the same manner as if such services were*
20 *services referred to in subsection (d).*

21 *(2) For purposes of this subsection, the term "Desert Shield*
22 *services" means any services in the armed forces of the United States or*
23 *in support of such armed forces if:*

24 *(A) Such services are performed in the area designated by the*
25 *president as the "Persian Gulf Desert Shield area"; and*

26 *(B) such services are performed during the period beginning on*
27 *August 2, 1990, and ending on the date on which any portion of the area*
28 *referred to in subsection (i)(2)(A) is designated by the president as a*
29 *combat zone pursuant to 26 U.S.C. § 112.*

30 *(j) For purposes of subsection (d), the term "qualified*
31 *hospitalization" means:*

32 *(1) Any hospitalization outside the United States; and*

33 *(2) any hospitalization inside the United States, except that not*
34 *more than five years of hospitalization may be taken into account under*
35 *this subsection. This subsection shall not apply for purposes of applying*
36 *subsections (d) through (j) with respect to the spouse of an individual*
37 *entitled to the benefits of subsection (d).*

38 *Sec. 9. K.S.A. 79-3225 is hereby amended to read as follows: 79-*
39 *3225. (a) All taxes imposed under the provisions of the "Kansas income*
40 *tax act" shall be paid on the 15th day of the fourth month following the*
41 *close of the taxable year, except with respect to tax year 2019, such taxes*
42 *shall be paid on or before July 15, 2020, if the return was due on or*
43 *before July 15, 2020. When the tax as shown to be due on a return is less*

1 *than \$5, such tax shall be canceled and no payment need be remitted by*
2 *the taxpayer.*

3 *(b) The director of taxation may extend the time for payment of the*
4 *tax, or any installment thereof, for a reasonable period of time not to*
5 *exceed six months from the date fixed for payment thereof. Such*
6 *extension may exceed six months in the case of a taxpayer who is*
7 *abroad. Interest shall be charged at the rate prescribed by K.S.A. 79-*
8 *2968(a) and amendments thereto for the period of such extension.*

9 *Sec. 10. K.S.A. 79-1110, 79-3221 and 79-3225 are hereby repealed.*

10 *Sec. ~~7~~ 11. This act shall take effect and be in force from and after its*
11 *publication in the ~~statute book~~ **Kansas register.***