

SENATE BILL No. 104

By Select Committee on Federal Tax Code Implementation

2-5

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) "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. "Paid tax return
17 preparer" does not include a person regulated under chapter 1 of the
18 Kansas Statutes Annotated, and amendments thereto, or any members of
19 the public accountants association of Kansas.

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

21 Sec. 3. (a) On and after January 1, 2020, any income tax return or
22 claim for refund prepared or substantially prepared by a paid tax return
23 preparer shall be signed by the paid tax return preparer and shall bear the
24 paid tax return preparer's federal internal revenue service preparer tax
25 identification number. Any paid tax return preparer who fails to sign the
26 income tax return or claim for refund or who fails to provide the preparer's
27 federal internal revenue service preparer tax identification number shall
28 pay a civil penalty of \$50 for each such failure to the Kansas department
29 of revenue, unless it can be shown that the failure was due to reasonable
30 cause and not willful or reckless conduct. The penalty imposed on any
31 paid tax return preparer with respect to returns or claims for refund filed
32 during any calendar year shall not exceed \$25,000 per paid tax return
33 preparer.

34 (b) The penalty shall be imposed pursuant to this section upon the
35 written order of the secretary or the secretary's designee to the paid tax
36 return preparer who committed the violation. Such order shall state the

1 violation, the penalty to be imposed and the right of the paid tax return
2 preparer to appeal the order. Such order shall be subject to appeal and
3 review in the manner provided by the Kansas administrative procedure act.

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

9 Sec. 4. (a) The secretary or the secretary's designee is hereby
10 authorized to enjoin any person from engaging in conduct described in
11 subsection (b) or from further action as a paid tax return preparer under the
12 provisions of the Kansas taxpayer protection act who is found to be in
13 violation of this act and the secretary or the secretary's designee shall be
14 entitled, in any proceeding brought for such purpose to have an order
15 restraining such person from engaging in conduct in violation of the
16 provisions of this act, and no bond shall be required for any such
17 restraining order, nor for any temporary or permanent injunction issued in
18 such proceedings. The secretary may commence suit in a court of
19 competent jurisdiction to enjoin any paid tax return preparer from further
20 engaging in any conduct described in subsection (b) or from further action
21 as a paid tax return preparer in this state. The secretary may request the
22 assistance of the attorney general or the attorney general's duly authorized
23 designee to enforce provisions of this section.

24 (b) In an action pursuant to subsection (a), the court may enjoin the
25 paid tax return preparer from further engaging in any conduct described in
26 this subsection, if the court finds that injunctive relief is appropriate to
27 prevent occurrence of such conduct. The court may issue an injunction
28 when the paid tax return preparer has engaged in any of the following
29 conduct:

30 (1) Prepared any income tax return or claim for refund that includes
31 an understatement of a taxpayer's liability due to an unreasonable position.
32 As used in this subsection, "unreasonable position" shall have the meaning
33 ascribed by section 6694(a)(2) of the federal internal revenue code;

34 (2) prepared any income tax return or claim for refund that includes
35 an understatement of a taxpayer's liability due to the paid tax return
36 preparer's willful or reckless conduct. As used in this subsection, "willful
37 or reckless conduct" shall have the meaning ascribed by section 6694(b)(2)
38 of the federal internal revenue code;

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

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

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

42 (C) furnish an identifying number;

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

- 1 (E) be diligent in determining eligibility for tax benefits;
- 2 (4) negotiated a check issued to the taxpayer by the department of
3 revenue without the permission of the taxpayer;
- 4 (5) engaged in any conduct subject to any criminal penalty provided
5 for in chapter 79 of the Kansas Statutes Annotated, and amendments
6 thereto;
- 7 (6) misrepresented the paid tax return preparer's eligibility to practice
8 before the department of revenue or otherwise misrepresented the paid tax
9 return preparer's experience or education;
- 10 (7) guaranteed the payment of any income tax refund or the
11 allowance of any income tax credit; or
- 12 (8) engaged in any other fraudulent or deceptive conduct that
13 substantially interferes with the proper administration of the tax laws of
14 the state of Kansas.

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

28 (d) The secretary or the secretary's designee shall annually report a
29 summary of the secretary's enjoinder actions on the department of
30 revenue's website.

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

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

39 (c) In lieu of instigating or continuing an action or proceeding, the
40 secretary or the secretary's designee may accept a consent judgment with
41 respect to any act or practice declared to be a violation of this act. A
42 consent judgment shall provide for the discontinuance by the paid tax
43 return preparer entering the same of any act or practice declared to be a

1 violation of this act. Any consent judgment entered into pursuant to this
2 section shall not be deemed to admit the violation, unless it does so by its
3 terms. Before any consent judgment entered into pursuant to this section
4 shall be effective, it must be approved by the district court and an entry
5 made in the manner required for making an entry of judgment. Once such
6 approval is received, any breach of the conditions of such consent
7 judgment shall be treated as a violation of a court order and shall be
8 subject to all the penalties provided by law.

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

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