

SESSION OF 2020

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2466

As Recommended by House Committee on
Taxation

Brief*

HB 2466, the Taxpayer Protection Act (Act), would, on and after January 1, 2021, require paid tax return preparers to sign any income tax return prepared by or substantially prepared by the preparer and to include the preparer's federal preparer tax identification number on any such return. Any failure to do so would subject the preparer to a civil penalty of \$50 per return with a maximum of \$25,000 in civil penalties per preparer per year. Any civil penalties assessed could be appealed pursuant to the Kansas Administrative Procedure Act. Any penalties collected would be deposited in the State General Fund.

The bill would authorize the Secretary of Revenue (Secretary) to enjoin any person from acting as a paid tax preparer by seeking a temporary or permanent order from a court of competent jurisdiction enjoining such conduct. Under the bill, an injunction could be issued by a court if the preparer has engaged in any of the following conduct:

- Prepared a return that understates the taxpayer's liability due to an "unreasonable position," as that term is defined in the Internal Revenue Code;
- Prepared a return that understates the taxpayer's liability due to "willful or reckless conduct," as that term is defined in the Internal Revenue Code;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Fails to, when required, furnish a signed copy of the return including the preparer's federal preparer tax identification number, retain a copy of the return, or be diligent in determining eligibility for tax benefits;
- Negotiates a check issued to the taxpayer by the Kansas Department of Revenue without the permission of the taxpayer;
- Engages in any conduct subject to any criminal penalty provided for in Chapter 79 of the *Kansas Statutes Annotated* or amendments thereto;
- Misrepresents the preparer's education, experience, or eligibility to practice tax preparation;
- Guarantees the payment of any tax refund or the allowance of any tax credit; or
- Engages in any other fraudulent or deceptive conduct that substantially interferes with proper administration of Kansas tax laws.

The bill would allow the Secretary to seek the assistance of the Attorney General or the Attorney General's designee in pursuing such injunctions, and the Secretary would be required to publish an annual report concerning such injunctions on the website of the Kansas Department of Revenue.

Further, the bill would provide that any person, whether or not a resident of Kansas, submits to the jurisdiction of the courts of the State of Kansas for purposes of such injunctions by engaging in any conduct that could give rise to a cause of action under the Act. The bill would provide that legal actions brought under the Act would be brought in the district court of Shawnee County. The Secretary would be permitted to enter into consent judgments with respect to violations of the Act in lieu of actions seeking injunctions.

Finally, the bill would authorize the Secretary to promulgate rules and regulations necessary to carry out the provisions of the Act.

Background

The bill was requested for introduction by Representative Gartner on behalf of H&R Block. During the House Committee on Taxation hearing on January 27, a representative of H&R Block provided proponent testimony. No other testimony was provided.

On February 3, the House Committee recommended the bill favorably for passage and that it be placed on the Consent Calendar.

The bill's provisions are similar to those in SB 104, which was passed by the Senate Committee of the Whole during the 2019 Session. The Senate Committee of the Whole amended the bill to include provisions relating to individual income tax expensing and a new property tax circuit breaker entitlement program. SB 104 remains in the House Committee on Taxation.

According to the fiscal note prepared by the Division of the Budget on the bill, the Department of Revenue indicates the bill would be expected to increase State General Fund receipts by a positive but indeterminate amount as a result of the fines. The Department of Revenue also indicates any costs associated with implementation could be absorbed within existing resources. Both the Office of Judicial Administration and the Office of the Attorney General indicate the bill has the potential to increase court activity and litigation costs, but the agencies are unable to provide estimates on such impacts. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.