

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 47

As Amended by House Committee of the Whole

Brief*

SB 47, as amended, would enact the Kansas Taxpayer Protection Act (Act), requiring, on and after January 1, 2022, 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;
- Fails to, when required, furnish a signed copy of the return including the preparer's federal preparer

*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>

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 introduced by the Senate Committee on Assessment and Taxation at the request of a representative of H&R Block.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing on January 26, 2021, a representative of H&R Block testified as a **proponent** on the bill, stating the provisions of the bill would protect Kansans from the actions of fraudulent income tax return preparers.

The Senate Committee recommended the bill be placed on the Consent Calendar.

House Committee of the Whole

The House Committee of the Whole adopted a technical amendment regarding the effective date of the bill.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the bill has the potential to increase state revenues by an indeterminate amount. The Office of Judicial Administration and the Office of the Attorney General indicate the provisions of the bill have the potential to increase costs for the court system and litigation costs, but are unable to provide an estimate of the exact amount of such costs.

Taxation; tax preparers; fraud