

SESSION OF 2019

SUPPLEMENTAL NOTE ON SENATE BILL NO. 104

As Amended by Senate Committee on
Assessment and Taxation

Brief*

SB 104, as amended, would create the Kansas Taxpayer Protection Act (Act).

The bill would 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 Department of Revenue.

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 under the Act.

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

Background

The bill was introduced by the Senate Select Committee on Federal Tax Code Implementation at the request of Senator Longbine.

At the Senate Committee on Assessment and Taxation hearing, a representative of H&R Block testified in support of the bill. No other testimony was provided.

The Senate Committee amended the bill to clarify the provisions of the bill would not apply to individuals licensed as Certified Public Accountants (CPAs). H&R Block had recommended this clarification, noting CPAs are regulated by the Kansas Board of Accountancy.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Revenue indicates the fines provided for by the bill have the potential to increase State General Fund revenues; however, the Department was unable to estimate the amount of such increase. The costs associated with enactment of the bill are estimated to be negligible and could be absorbed within existing resources. The Office of the Attorney General indicates the bill has the potential to increase litigation costs beginning in FY 2020, but did not estimate the amount of such an increase. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.