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NOTICE 21-21

KANSAS TAXPAYER PROTECTION ACT
(JULY 13, 2021)

During the 2021 Legislative Session Senate Bill 47 was passed and signed into law. New Sections 1 through 6 of the Bill are designated the Kansas Taxpayer Protection Act. The Act is effective on and after January 1, 2022.

The Act applies to "paid tax preparers". It does not apply to licensed certified public accountants, or someone employed by a licensed certified public accounting firm. Subsection (a) of New Section 2 defines the term as follows:

> (a) "Paid tax return preparer" means any person who prepares or substantially prepares for compensation, or who employs one or more persons who prepare or substantially prepare for compensation, any income tax return or claim for refund, required to be filed pursuant to K.S.A. 79-3201 et seq., and amendments thereto. "Paid tax return preparer" does not include the following:
>
> (1) An individual licensed as a certified public accountant in this state under K.S.A. 1-302b or 1-322, and amendments thereto;
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> (2) an individual licensed as a certified public accountant in another licensing jurisdiction and practicing in this state under K.S.A. 1-302b or 1-322, and amendments thereto; or
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> (3) an individual employed by a firm licensed in this state under K.S.A. 1-308, and amendments thereto, and preparing a return under the supervision of an individual described in paragraph (1) or (2).

New Section 3 of the Bill requires 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 subjects the preparer to a civil penalty of $50 per return with a maximum of $25,000 in civil penalties per preparer per calendar year. Any civil penalties assessed can be appealed pursuant to the Kansas Administrative Procedure Act. Any penalties collected will be deposited in the State General Fund.

New Section 4 of the Bill authorizes the Secretary of Revenue 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 subsections (b) and (c) of New Section 4 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;

- Failed 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;

- Negotiated a check issued to the taxpayer by the Kansas Department of Revenue without the permission of the taxpayer;

- Engaged in any conduct subject to any criminal penalty provided for in Chapter 79 of the Kansas Statutes Annotated or amendments thereto;

- Misrepresented the preparer's education, experience, or eligibility to practice tax preparation;

- Guaranteed the payment of any tax refund or the allowance of any tax credit; or

- Engaged in any other fraudulent or deceptive conduct that substantially interferes with proper administration of Kansas tax laws.

Subsection (a) of New Section 4 allows the Secretary to seek the assistance of the Attorney General or the Attorney General's designee in pursuing an injunction and, in accordance with subsection (d) of New Section 4, the Secretary is required to publish an annual report concerning such injunctions on the website of the Kansas Department of Revenue.

New Section 5 of the Bill provides 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. It also provides legal actions brought under the Act must be brought in the district court of Shawnee County. The Secretary is permitted to enter into consent judgments with respect to violations of the Act in lieu of actions seeking injunctions.

New Section 6 authorizes the Secretary to promulgate rules and regulations necessary to carry out the provisions of the Act.

TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.org. If you have questions about this Notice, please contact:

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