

FIRST REGULAR SESSION

SENATE BILL NO. 118

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CIERPIOT.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0568S.01I

AN ACT

To amend chapter 143, RSMo, by adding thereto one new section relating to the protection of taxpayers utilizing certain tax preparers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 143, RSMo, is amended by adding thereto one new section, to be known as section 143.980, to read as follows:

143.980. 1. This section shall be known as the "Taxpayer Protection Act".

2. For the purposes of this section, the following terms shall mean:

(1) "Department", the Missouri department of revenue;

(2) "Paid tax return preparer", a person who prepares for compensation, or who employs one or more persons to prepare for compensation, any income tax return or claim for refund required to be filed under this chapter. The preparation of a substantial portion of a return or claim for refund shall be treated as the preparation of such return or claim for refund. A paid tax return preparer shall not include any certified public accountant who holds an active license issued by any state and the employees of such certified public accountant or certified public accounting firm;

(3) "Willful or reckless conduct", the same meaning as defined under 26 U.S.C. Section 6694;

3. For all tax years beginning on or after January 1, 2020, any income tax return or claim for refund prepared by a paid tax return preparer shall be signed by the paid tax return preparer and shall bear the paid tax return preparer's Internal Revenue Service preparer tax identification number. Any person who is the paid tax return preparer

22 with respect to any income tax return or claim for refund and who fails
23 to sign the return or claim for refund, or who fails to provide his or her
24 preparer tax identification number, shall pay a penalty of fifty dollars
25 for each such failure, unless it can be shown that the failure was due
26 to reasonable cause and not willful or reckless conduct. The aggregate
27 penalty that may be imposed by the department on any paid tax return
28 preparer with respect to returns or claims for refund filed during any
29 calendar year shall not exceed twenty-five thousand dollars per paid
30 tax return preparer.

31 4. (1) In a court of competent jurisdiction, the director of
32 revenue may commence suit to enjoin any paid tax return preparer
33 from further engaging in any conduct described in subdivision (2) of
34 this subsection, or from further action as a paid tax return preparer.

35 (2) In any action under subdivision (1) of this subsection, if the
36 court finds that injunctive relief is appropriate to prevent the
37 recurrence of willful or reckless conduct, the court may enjoin the paid
38 tax return preparer from further engaging in any conduct specified in
39 the action. The court may enjoin conduct when a paid tax return
40 preparer has done any of the following:

41 (a) Prepared any income tax return or claim for refund that
42 includes an understatement of a taxpayer's liability due to an
43 unreasonable position. For purposes of this subdivision, the term
44 "unreasonable position" shall have the same meaning as defined under
45 26 U.S.C. Section 6694;

46 (b) Prepared any income tax return or claim for refund that
47 includes an understatement of a taxpayer's liability due to the paid tax
48 return preparer's willful or reckless conduct;

49 (c) Where required, failed to sign an income tax return or claim
50 for refund;

51 (d) Where required, failed to furnish his or her preparer tax
52 identification number;

53 (e) Where required, failed to retain a copy of an income tax
54 return;

55 (f) Where required by due diligence requirements imposed by
56 department rules and regulations, failed to be diligent in determining
57 a taxpayer's eligibility for tax benefits;

58 (g) Negotiated a check issued to a taxpayer by the department

59 without the permission of the taxpayer;

60 (h) Engaged in any conduct subject to any criminal penalty
61 provided under chapters 135 to 155;

62 (i) Misrepresented to the department the paid tax return
63 preparer's eligibility to practice or otherwise misrepresented the paid
64 tax return preparer's experience or education;

65 (j) Guaranteed the payment of any income tax refund or the
66 allowance of any income tax credit; or

67 (k) Engaged in any other fraudulent or deceptive conduct that
68 substantially interferes with the proper administration of the laws of
69 this state.

70 (3) (a) If the court finds that a paid tax return preparer has
71 continually or repeatedly engaged in any conduct described in
72 subdivision (2) of this subsection and that an injunction prohibiting the
73 conduct would not be sufficient to prevent the paid tax return
74 preparer's interference with the proper administration of the laws of
75 this state, the court may enjoin the paid tax return preparer from
76 acting as a paid tax return preparer in Missouri.

77 (b) Being enjoined from preparing tax returns or claims for
78 refund for the United States or any other state in the five years
79 preceding the petition for an injunction under this section shall
80 establish a prima facie case for an injunction to be issued under this
81 section. For purposes of this paragraph, the term "state" shall mean a
82 state of the United States, the District of Columbia, Puerto Rico, United
83 States Virgin Islands, or any territory or insular possession subject to
84 the jurisdiction of the United States.